

ORIGINAL

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA ✓

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JEANNE HICKS, CLERK

B. Hamilton

BY: _____

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF YAVAPAI

3
4 THE STATE OF ARIZONA,)

5 Plaintiff,)

6 vs.)

No. CR 2008-1339

7 STEVEN CARROLL DEMOCKER,)

8 Defendant.)

9
10
11 BEFORE: THE HONORABLE THOMAS B. LINDBERG
12 JUDGE OF THE SUPERIOR COURT
13 DIVISION SIX
YAVAPAI COUNTY, ARIZONA

14 PRESCOTT, ARIZONA
15 TUESDAY, DECEMBER 23, 2008
16 9:01 A.M.

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 SIMPSON HEARING

19 TESTIMONY OF JOHN McDORMETT
20 TESTIMONY OF STEVE PAGE

21
22
23
24 ROXANNE E. TARN, CR
25 Certified Court Reporter
Certificate No. 50808

DECEMBER 23, 2008
9:01 A.M.

SIMPSON HEARING

APPEARANCES:

FOR THE STATE, MR. MARK AINLEY.
FOR THE DEFENDANT, MR. JOHN SEARS.

THE COURT: This is the time set for a hearing on the release conditions, State versus Steven Carroll Democker, CR 2008-1339. Mr. Democker is present and is in custody. Mr. Ainley is here for the County Attorney's office, representing the State. Mr. Sears is here for the defense.

I haven't had the pleasure of --

MR. SEARS: This is Mr. Rich Robertson of Mesa, Arizona. He is my investigator in this case, and I ask that he sit with me at counsel table.

THE COURT: Either side invoking the rule?

MR. SEARS: Yes.

THE COURT: Both sides are. Mr. Ainley nodded, as well.

MR. AINLEY: I did. And I asked earlier. Mr. Sears told me he was.

THE COURT: And then there's a young lady behind you?

MR. SEARS: Thank you, Judge.

This is Miss Susan Democker, who is an

1 investigator, employed by me, working in this case, and I ask
2 that she be allowed to sit in front of the bar, as well.
3 She's part of the defense team.

4 THE COURT: Do you have other victim
5 representatives that are present, Mr. Ainley, that want to be
6 excluded from the application of the rule?

7 MR. AINLEY: I don't believe so.

8 THE COURT: And of the folks in the gallery,
9 are any of them witnesses?

10 MR. AINLEY: Yes, your Honor. There are three
11 officers seated over on this side: Detective McDormett,
12 Detective Brown, and Detective Page.

13 THE COURT: And are you designating one as
14 your investigator?

15 MR. AINLEY: Detective McDormett.

16 THE COURT: He can remain and not be subject
17 to the rule excluding witnesses.

18 Mr. Sears, any witnesses that you're
19 intending to call?

20 MR. SEARS: I don't, your Honor. The majority
21 of the people here in the first two rows behind me are
22 members of the Democker family, and none of them are going to
23 be witnesses today.

24 THE COURT: Let's have the officers that are
25 going to be called.

1 Are you intending to call Mr. Robertson
2 as a potential witness, for purposes of getting sworn in?

3 MR. SEARS: No, your Honor.

4 THE COURT: We'll have the officers sworn in,
5 at this point.

6 MR. AINLEY: Judge, I need to advise you,
7 also, Detective McDormett is sick with the flu and has been
8 up all night.

9 THE COURT: My bailiff advised me of that.

10 MR AINLEY: He may need to excuse himself from
11 time to time.

12 THE COURT: I have no problem with him
13 excusing himself.

14 If we need to take any breaks during
15 testimony, please, Detective, let us know.

16 All of you raise your right hands. The
17 clerk will swear you in.

18 THE CLERK: Do you solemnly swear upon penalty
19 of perjury the testimony you are about to give will be the
20 truth, the whole truth, and nothing but the truth, so help
21 you God?

22 WITNESSES COLLECTIVELY: I do.

23 THE COURT: The rule excluding witnesses has
24 been invoked, and although I recognize that all of you are
25 experienced officers and probably know what that means, I

1 will emphasize that you can't discuss your testimony amongst
2 yourselves during the course of the hearing, other than the
3 investigator that's allowed to remain in the courtroom. The
4 other two will have to leave and not be present during the
5 courtroom -- or in the courtroom during testimony prior to
6 your taking the stand.

7 You may discuss your testimony with
8 either or both of the lawyers, but not huddled up all
9 together. You need to be spoken to separately. So even as
10 between the investigator that is allowed to remain in and the
11 other officers, you are not to discuss the testimony. Okay?

12 So who are you going to call first?

13 MR. AINLEY: Detective McDormett.

14 THE COURT: You may proceed.

15 JOHN McDORMETT,
16 called as a witness, having been duly sworn, testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. AINLEY:

20 Q. Sir, would you state your name, please.

21 A. John McDormett.

22 Q. How are you employed, sir?

23 A. I am a detective in the sheriff's office with
24 Yavapai County.

25 Q. And how long have you been in law enforcement?

1 A. About 15 years.

2 Q. And what is your current assignment?

3 A. I am a detective.

4 Q. And what does that mean to be a detective?

5 A. You investigate major crimes.

6 Q. Have you investigated homicides, previously?

7 A. Yes.

8 Q. How many?

9 A. Approximately 20.

10 Q. And how long have you been a detective, now?

11 A. About five years.

12 Q. What sort of schooling or training have you
13 undergone to become a homicide detective?

14 A. I have been through basic homicide school, a
15 buried body class, FBI classes relating to profiling and
16 things of that nature.

17 Q. Sir, I am placing what has been marked as
18 Exhibit 1, for purposes of this hearing, here in front of
19 you. It is a copy of the departmental report in this matter.
20 Please feel free at any time to use that document to refresh
21 your recollection, but please indicate verbally that you are
22 looking at the report. Okay?

23 A. Yes, sir.

24 Q. All right. And I am going to show you what has
25 been marked as Exhibit 2.

1 Do you recognize that document, sir?

2 A. Yes, I do.

3 Q. Why do you recognize it?

4 A. It appears to be the testimony taken during the
5 Grand Jury, and I read it over.

6 Q. Are you one of the two officers who testified at
7 the Grand Jury?

8 A. Yes, I am.

9 Q. Have you had a chance to review that document for
10 accuracy?

11 A. Yes, I did.

12 MR. AINLEY: State moves for the admission of
13 Exhibit 2.

14 MR. SEARS: No objection.

15 THE COURT: Exhibit 2 is admitted.

16 MR. AINLEY: I will give it to the clerk for
17 just a second, and then I will give it back to you.

18 Q. What date did you present that testimony to the
19 Grand Jury?

20 A. I believe it was October 31st, '08.

21 Q. And let's go through your testimony in that
22 document. First, I would like you to turn to Page 15, lines
23 11 through --

24 MR. SEARS: If I could have a moment, your
25 Honor. Thank you.

1 I am with you, Counsel.

2 BY MR. AINLEY:

3 Q. Page 15, lines 11 through 17.

4 A. Yes, sir.

5 Q. In that section of your testimony you were
6 discussing the crime scene. Do you remember that?

7 A. Yes, sir.

8 Q. And you made reference to a bookcase?

9 A. Yes, sir.

10 Q. Tell us what the significance of the bookcase was,
11 please.

12 A. The bookcase had blood spatter on it from the
13 victim. We believe that bookcase was moved after the victim
14 was killed in order to make it look like a fall or something
15 to that effect.

16 Q. Let me show you what's been marked as -- let me
17 show you what's been marked as Exhibits 5 -- let's start
18 with 5.

19 What is 5?

20 A. 5 appears to be the bookshelf.

21 Q. Can you see the blood splatter in 5?

22 A. I can't really make out the blood spatter in this
23 picture. I can see droplets that appear, perhaps, to be
24 blood spatter.

25 Q. Okay. And Exhibit 6.

1 Do you recognize Exhibit 6?

2 A. I recognize it as a picture of the bookcase --
3 which I should point out I was not at the scene, but I did
4 see these photographs prior.

5 Q. Exhibit 7?

6 A. Yes, sir. A bookcase with blood spatter on it.

7 Q. And 8?

8 A. Bookcase with blood spatter on it.

9 Q. Were these photographs the basis of your testimony
10 presented to the Grand Jury?

11 A. Actually, the basis of my testimony was the
12 statements from other officers. And I also did look at the
13 photographs.

14 Q. Do you recognize these photographs as being the
15 photographs that were taken of the scene at the time?

16 A. They appear to be consistent with that.

17 Q. State moves for the admission of 6, 7, 8 and 9.
18 I'm sorry -- 5, 6, 7 and 8.

19 MR. SEARS: May I have a question or two on
20 voir dire?

21 THE COURT: Yes.

22 VOIR DIRE EXAMINATION

23 BY MR. SEARS:

24 Q. Detective McDormett, you said a moment ago you
25 were not actually at the scene. Have you ever actually seen

1 these bookshelves?

2 A. No, sir.

3 Q. And do you know who took these photographs that
4 are being offered by the State?

5 A. Probably a crime scene tech. I am not exactly
6 sure who took the photographs.

7 Q. And have you seen other photographs of the crime
8 scene that would help you understand where the bookshelves
9 were found by the first responders in this case?

10 A. I believe that there were photographs that gave a
11 greater perspective of the room.

12 Q. Have you seen those photographs?

13 A. If such photographs exist, I did see them. I
14 don't recall.

15 Q. The portion of the Grand Jury transcript that
16 Mr. Ainley was directing you to, Page 15, has conclusions by
17 you about the significance of the blood evidence that is in
18 these photographs. Is that accurate?

19 A. Yes, sir.

20 Q. But when you gave that testimony to the Grand
21 Jury, again, you were just repeating what other officers had
22 told you about their observations and conclusions; is that
23 right?

24 A. Yes, sir.

25 Q. Do you have any training or expertise in

1 blood-splatter evidence yourself?

2 A. Blood spatter? No, sir.

3 MR. SEARS: Your Honor, I object to 5, 6, 7,
4 and 8. Even for limited purposes in a hearing like this and
5 even with the relaxed evidence, I just think this witness has
6 nothing to support the relevance of these photographs. He
7 has never seen the object. He wasn't there. He can't even
8 see blood splatter in Exhibit 5, he says.

9 THE COURT: No "L." There is no L. It's
10 "blood spatter."

11 MR. SEARS: Did I say "splatter"?

12 THE COURT: Yes.

13 MR. SEARS: I'm sorry.

14 THE COURT: Mr. Ainley, any additional
15 comments that you want to make before I make the ruling?

16 MR. AINLEY: Just that he said that these
17 photographs, plus the testimony of other officers, was the
18 basis for his testimony at Grand Jury.

19 THE COURT: I will admit 5, 6, 7, and 8. I
20 recognize the limitation of the witness's testimony with
21 regard to them.

22 DIRECT EXAMINATION RESUMED

23 BY MR. AINLEY:

24 Q. Sir, I'm going now to Page 18 of the transcript,
25 lines 8 through 16.

1 Did you have any -- did you review the
2 photographs concerning the bicycle and the bicycle tread
3 impressions?

4 A. Yes, I looked over them.

5 Q. Was that before you testified to the Grand Jury?

6 A. Yes.

7 Q. Let me show you what has been marked as Exhibit 9.

8 Exhibit 9. Do you recognize the object
9 in that photograph?

10 A. Yes.

11 Q. What is it?

12 A. Appears to be the bicycle that was confiscated at
13 the Alpine residence, the bicycle that belongs to
14 Mr. Democker.

15 Q. Where is that bicycle now?

16 A. It is in our evidence unit.

17 Q. Have you looked at that bicycle in evidence?

18 A. Yes.

19 Q. Let me show you what has been marked as
20 Exhibit 10.

21 Do you recognize that?

22 A. Yes.

23 Q. What is that?

24 A. It appears to be one of the tires off of that
25 bicycle.

1 Q. Is that also in evidence?

2 A. Yes.

3 Q. I am going to show you what has been marked as
4 Exhibit 11.

5 Do you recognize that?

6 A. It appears to be one of the tires off of that
7 bicycle that is in evidence.

8 MR. SEARS: Your Honor, I understand the
9 detective is ill. I am having a great deal of difficulty
10 hearing him.

11 THE WITNESS: I'm sorry, sir. I will speak
12 up.

13 MR. SEARS: Thank you.

14 BY MR. AINLEY:

15 Q. Is that tire also in evidence?

16 A. Yes, sir.

17 Q. Okay. Have you had a chance to look at that
18 evidence at the sheriff's office?

19 A. Yes, sir.

20 Q. Do these accurately portray the items that were
21 seized from Mr. Democker's house back in June of 2008?

22 A. They appear to be.

23 MR. AINLEY: State moves for the admission of
24 9, 10, and 11.

25 MR. SEARS: Your Honor, I think those

1 items -- the items of physical evidence were seized in July
2 of this year, not in June. And I think the photographs are
3 photographs of tire tracks. Some of the exhibits -- I am not
4 sure which ones now -- they certainly weren't seized.

5 THE COURT: These ones appear to be the actual
6 photos of the tires.

7 Do you have any objection to that?

8 MR. SEARS: No.

9 THE COURT: 9, 10, and 11 are admitted.

10 BY MR. AINLEY:

11 Q. I am going to show you what's been marked as
12 Exhibit 12.

13 Do you recognize that photograph?

14 A. Yes, I have seen it.

15 Q. Do you know what that is a photograph of?

16 A. Appears to be the tread impressions left on the
17 trail near the gate by Glenshandra.

18 Q. How do you know that?

19 A. That's what I was told by other officers.

20 Q. Was that the basis of your testimony presented to
21 the Grand Jury on October 31st?

22 A. Yes. Recollection of other officers and
23 photographs.

24 MR. AINLEY: Okay.

25 State moves for the admission of 12.

1 MR. SEARS: Just a moment, your Honor.

2 No objection, subject to
3 cross-examination.

4 THE COURT: 12 is admitted.

5 BY MR. AINLEY:

6 Q. Sir, let's go to Page 28, lines 8 through 11.

7 A. Yes, sir.

8 Q. Sir, let me show you what has been marked as
9 Exhibit 18.

10 Do you recognize that photograph?

11 A. Yes, sir.

12 Q. What is that photograph of?

13 A. That is a photograph of a shelving unit that is
14 located in the garage at the Alpine residence, which is the
15 residence of Mr. Democker.

16 Q. What is the source of your knowledge of this
17 photograph?

18 A. The statements from other officers.

19 Q. And have you reviewed this photograph previously?

20 A. Yes, I have.

21 Q. Is this the photograph that was taken of
22 Mr. Democker's garage during the execution of the first
23 search warrant?

24 A. Yes, it is.

25 Q. What is the significance of this photograph,

1 please?

2 A. It shows the appearance of the shelving and a --
3 and the golf-head cover on that shelving.

4 MR. AINLEY: The State moves for the admission
5 of 18.

6 MR. SEARS: No objection.

7 THE COURT: 18 is admitted.

8 MR. AINLEY: Could you hold that photograph up
9 and point out to the Court the golf-head cover that you were
10 just referring to.

11 THE COURT: Thank you.

12 BY MR. AINLEY:

13 Q. Is this the golf-head cover that could not be
14 found during the execution of the second search warrant a few
15 hours later?

16 A. Yes, sir. That is what I was told.

17 Q. Let me show you what has been marked as
18 Exhibit 23.

19 Do you recognize Exhibit 23.

20 A. Yes, sir.

21 Q. Why do you recognize Exhibit 23?

22 A. It's the -- appears to be the same golf-head cover
23 that is in the photograph that I just looked at.

24 Q. When was that photograph taken?

25 A. I can't answer that. I did not take that

1 photograph.

2 Q. Well, at some point in time after that golf-head
3 cover disappeared, was it recovered?

4 A. Yes, sir.

5 Q. Where was it recovered from?

6 A. To my knowledge, from Mr. Sears' office.

7 Q. Does it accurately show the golf-head cover as it
8 sits in evidence today?

9 A. Yes, sir.

10 MR. AINLEY: States moves for the admission of
11 23.

12 MR. SEARS: No objection.

13 THE COURT: 23 is admitted.

14 BY MR. AINLEY:

15 Q. Let's go, now, to Page 34, line 1. Let me show
16 you what has been marked as Exhibit 24.

17 Do you recognize the objects in that
18 photograph?

19 A. Yes, sir.

20 Q. Why do you recognize them?

21 A. They were confiscated. I am not sure which books
22 were confiscated, exactly where. I would have to refer to
23 the report. But there were six books confiscated. These are
24 two of them.

25 Those books were taken from -- it was the

1 search warrant from three different locations: All the books
2 found in Mr. Democker's residence in Alpine Valley, Prescott,
3 the residence that he was sharing with his daughter, the
4 apartment he was sharing with his daughter in Scottsdale, and
5 a storage facility in Prescott.

6 Q. Let me show you what's also marked as Exhibit 25,
7 Exhibit 26. We need to identify each one of them.

8 Let's start with 25, there. What is 25?

9 A. It's one of the books that was confiscated that I
10 just testified to, referenced to the other two books.

11 Q. How many books, total, were confiscated?

12 A. Six.

13 Q. Let me show you what is marked as Exhibit 26.

14 A. Yes, sir. Same testimony as before. Each one of
15 the books that was confiscated on October 23rd, '08.

16 Q. Exhibit 27?

17 A. This is one of the books that was confiscated on
18 October 23rd of '08.

19 Q. And Exhibit 28?

20 A. This is one of the books that was confiscated on
21 October 23rd of '08.

22 MR. AINLEY: State moves for the admission of
23 Exhibits 24 through 28.

24 MR. SEARS: Your Honor, I have a relevance
25 objection at this point. These books, as I understand from

1 the State's disclosure, are books that are alleged to have
2 been obtained by my client as some sort of a plan to leave
3 the area. Of course, he wasn't charged for any crime.

4 For purposes of the Simpson part of this
5 hearing, I can't imagine that they would constitute that some
6 sort of evidence of consciousness of guilt. There is no
7 actual flight. He was arrested in Arizona, sitting at his
8 desk, in Phoenix. So for purposes of this part of the
9 hearing, I see no relevance to the discussion or admission of
10 these photographs.

11 THE COURT: Mr. Ainley.

12 MR. AINLEY: Judge, they do show consciousness
13 of guilt, as will be brought out with the next set of
14 exhibits in which the defendant's daughter states the
15 defendant was planning on fleeing.

16 Secondly, Judge, they are relevant to a
17 Simpson hearing, because if the State were to fail to show a
18 proof evident or a presumption great that the defendant
19 committed the offense, then the Court would be obligated to
20 set an appropriate bond. And if the defendant is a flight
21 risk and was planning on fleeing at the time, that is
22 certainly relevant to the Court's consideration of an
23 appropriate bond.

24 THE COURT: I think we are actually putting
25 the cart before the horse on that theory. I think the

1 Simpson-Owens type hearing is talking about proof evident,
2 presumption great, as regard to offense.

3 I do find some relevance to the issue of
4 setting bond, but I will deny the admission of Exhibits 24
5 through 28 for purposes of the hearing itself on relevance
6 grounds. I may consider that if we do get to the second
7 stage of setting the bond.

8 MR. AINLEY: Well, let me proceed, Judge, and
9 I may be re-offering these.

10 THE COURT: That is fine, too. If it becomes
11 relevant as we go along, I will reconsider it.

12 MR. AINLEY: Okay.

13 Q. Sir, turn to Page 38. Lines 14 through 18.

14 A. Yes, sir.

15 Q. This is the testimony that you gave at the Grand
16 Jury concerning Mr. Democker's daughter's journal, found
17 during the execution of the search warrant, the day that
18 Mr. Democker was arrested in October; is that correct?

19 A. Yes, sir.

20 MR. SEARS: Could I have moment, your Honor?

21 BY MR. AINLEY:

22 Q. Let me show you what you has been marked as
23 Exhibit 29.

24 Do you recognize 29?

25 A. Yes, sir.

1 Q. Why do you recognize 29?

2 A. It appears to be a page out of the journal that we
3 attribute to Sharlot Democker. It was confiscated, I
4 believe, or obtained from her, I believe, from her room at
5 the Alpine Valley residence on October 23rd.

6 Q. I am going to show you Exhibit 30.

7 Do you recognize that?

8 A. This would appear to be another page of that
9 journal I just referred to.

10 Q. And Exhibit 31?

11 A. This would appear to be another page of the
12 journal I referred to.

13 Q. Does this -- do these --

14 MR. SEARS: Your Honor, I am going to have
15 another cart-before-the-horse objection to these, that these
16 were mentioned just a moment ago. These were journal entries
17 that talk about a plan that my client had to leave. I think
18 we are not there yet.

19 Before this witness is allowed to testify
20 from documents that are not in evidence, I would ask the
21 Court to let us move on and save them as to relevance later
22 on.

23 THE COURT: I don't have a question as to that
24 yet, so proceed with the question.

25 MR. AINLEY: Thank you.

1 Q. Were these documents the basis for your testimony
2 presented to the Grand Jury on October 31st?

3 A. Yes, sir.

4 MR. AINLEY: State moves for the admission of
5 29, 30, and 31.

6 MR. SEARS: Now I have my objection, your
7 Honor. But the substance of those exhibits and the
8 testimony, that they were laid to before the Grand Jury, are
9 all about the same story that Mr. Democker was planning to
10 leave, and I think we are a bit premature here, and I would
11 object for purposes of the Simpson part of this hearing.

12 THE COURT: Mr. Ainley?

13 MR. AINLEY: Again, Judge, it goes to
14 consciousness of guilt, that the defendant was planning on
15 fleeing.

16 And, Judge, let me point out, also, the
17 testimony of the officer has already been moved into evidence
18 through the Grand Jury transcript. These are just supporting
19 documents that show that -- that are the bases for the
20 officer's testimony.

21 So as far as relevance, I believe
22 relevance was probably waived when the Grand Jury transcript
23 was moved into evidence, and these are just simply supporting
24 documents, at this time.

25 THE COURT: Mr. Sears.

1 MR. SEARS: Your Honor, to the extent that the
2 State wants to argue substantively from the Grand Jury
3 transcript about matters that are independently not relevant,
4 I don't think there is ever a time the defendant would be
5 deemed to have waived those objections. We simply are not
6 going to object procedurally to the Court for a witness
7 having a Grand Jury transcript for reference.

8 But I think that for purposes of the
9 issues before the Court this morning, this evidence is not
10 there yet.

11 THE COURT: I disagree with you. I think
12 consciousness of guilt is an issue, and given that, I have
13 reconsidered the admissibility of 24 through 28.

14 So I am going to admit 24 through 31,
15 showing the objection on relevancy grounds to 29, 30, and 31.

16 MR. AINLEY: Judge, I will hand 24, 25, 26,
17 27, and 28 to the clerk.

18 Q. Officer, can you locate the quote that you gave to
19 the Grand Jury in those documents, please.

20 A. Yes, I can. Would you like me to read it?

21 Q. Yes, please.

22 A. "My dad is considering running. Even if he gets
23 caught, I will never get to hug him again. I can't live with
24 Katie. I don't want to finish high school in California. I
25 can't leave Jake."

1 I believe that is what I testified to.

2 MR. AINLEY: Thank you, sir.

3 Judge, you did admit 29, 30, and 31?

4 THE COURT: I did.

5 THE WITNESS: Your Honor, can I be excused?

6 THE COURT: Take a brief recess.

7 (Brief Recess.)

8 THE COURT: Counsel, defendant, and the
9 witness are all present. And you may proceed.

10 MR. AINLEY: Thank you.

11 DIRECT EXAMINATION RESUMED

12 BY MR. AINLEY:

13 Q. Detective, are you feeling okay?

14 A. No. I am under oath; right?

15 Q. All right. Let's continue on Page 38 to line 22.

16 This was testimony that you gave the
17 Grand Jury concerning a motorcycle purchased by Mr. Democker?

18 A. Yes, sir.

19 Q. Sir, let me show you what has been marked as
20 Exhibit 32.

21 Do you recognize that?

22 A. I recognize that as a photograph of the motorcycle
23 that I was told belonged to Mr. Democker, and the
24 registration reflects that.

25 Q. And Exhibit 33?

1 A. Same thing.

2 Q. Where is that motorcycle now?

3 A. I don't know.

4 Q. Was that taken in the -- is it in evidence at
5 YCSO?

6 A. I don't believe so.

7 Q. Is that the -- did you say that you had checked
8 registration of that motorcycle?

9 A. I didn't. Another detective did.

10 Q. And who is the registered owner?

11 A. Mr. Democker.

12 Q. And when did he acquire that motorcycle?

13 A. I believe that motorcycle was registered on
14 August 8th.

15 Q. Of 2008?

16 A. Yes, sir.

17 Q. Is this the motorcycle that you were discussing on
18 Page 38, at the bottom of the page?

19 A. Yes, sir.

20 MR. AINLEY: State moves for the admission of
21 32 and 33.

22 MR. SEARS: No objection.

23 THE COURT: 32 and 33 are admitted.

24 BY MR. AINLEY:

25 Q. Let me show you what has been marked as

1 Exhibit 34.

2 Do you recognize the contents of that
3 photograph?

4 A. Yes, sir.

5 Q. Why do you recognize it?

6 A. I was told by detectives at the scene that this
7 photograph was taken at the Scottsdale apartment. Katie
8 Democker and Mr. Democker also shared that residence
9 part-time. I was told that these photographs were taken in
10 Mr. Democker's bedroom.

11 Q. What does the photograph show?

12 A. They show a motorcycle helmet, and I was told
13 there were two tents. Two suitcase-type saddle bags, I guess
14 you could say, that I was told would belong to the BMW
15 motorcycle. They appear to show a street set of Mexico, GPS
16 software, and then some other items including, I believe,
17 there is a dry bag in there.

18 Q. Show you Exhibit 35. Do you recognize that
19 photograph?

20 A. Yes, sir. Same circumstances as before. There is
21 a CamelBak and what appears to be motorcycle boots.

22 Q. Exhibit 36?

23 A. Appears to a motorcycle jacket --

24 Q. Same location?

25 A. -- or a jacket. Yes, sir.

1 Q. Exhibit 37?

2 A. Same items as I attested to in the first
3 photograph, only it appears to be an overhead shot of some of
4 those items.

5 Q. Okay. Exhibit 38?

6 A. Same thing.

7 Q. Exhibit 39?

8 A. I was told that these are the contents of the dry
9 bag. There is a number of provisions in there.

10 MR. SEARS: I'm sorry, your Honor. I am not
11 hearing the witness's --

12 THE WITNESS: Do you need me to repeat
13 anything?

14 MR. SEARS: Please. Would you?

15 THE WITNESS: Okay. These are items that I
16 was told were found in what one of the detectives called the
17 "dry bag." There was a number of provisions in there -- beef
18 jerky, ramen-noodle type things, energy bars.

19 There is also a photograph of a handgun
20 with two magazines. From my understanding, that handgun was
21 loaded and so were the magazines.

22 BY MR. AINLEY:

23 Q. Exhibit 40?

24 A. Appears to be a photograph of the same items I
25 just testified to.

1 Q. 41?

2 A. Third photograph of the items I just testified to.

3 Q. Exhibit 42?

4 A. Is a photograph of the handgun, along with some of
5 the other items.

6 Q. Are there magazines for that handgun in the
7 photograph?

8 A. Yes, sir. There is two magazines for that handgun
9 in the photograph. They are both -- the photographs show
10 that they are loaded.

11 And I was told by detectives at the scene
12 that the gun and the magazines were loaded.

13 Q. Exhibit 43?

14 A. This is a photograph of the Garmin plug-and-play
15 street maps of streets of Mexico, along with what appears to
16 be a receipt from Garmin shipped to Mr. Democker at the
17 Alpine address.

18 Q. Is this a GPS-type map?

19 A. Yes. I believe you would need to put that into
20 the actual GPS unit and perhaps even be in that area --
21 although I am not sure of that -- in order for it to work.
22 But I do believe you need to have the GPS unit to operate the
23 software.

24 MR. AINLEY: The State moves for the admission
25 of Exhibits 34 through 43.

1 MR. SEARS: May I have a few questions on voir
2 dire, your Honor?

3 THE COURT: Yes.

4 VOIR DIRE EXAMINATION

5 BY MR. SEARS:

6 Q. Detective, when did Mr. Democker purchase the
7 motorcycle?

8 A. It was registered on August 8, 2008. I am not
9 sure when he purchased the motorcycle. I would have to -- I
10 believe Detective Brown may be able to answer that question.

11 Q. You would have no reason to believe, would you,
12 that Mr. Democker owned that motorcycle before you seized his
13 automobile on July 3rd, 2008, would you?

14 A. From my understanding, he did not own it. Based
15 on the statements of other detectives, he did not own it
16 prior to that day.

17 Q. Mr. Democker, in fact, owned a vehicle that was
18 seized by the police the day after this event, on July 3rd,
19 which the police still have; correct?

20 A. You are referring to his car, sir?

21 Q. His car, yes.

22 A. Yes, sir.

23 Q. And you are not aware that Mr. Democker bought or
24 leased or rented another car after you seized his car?

25 A. Yes, sir. Our information is he did rent another

1 vehicle.

2 Q. A Charger that was also found in Scottsdale?

3 A. Yes, sir.

4 Q. That was a leased vehicle?

5 A. Yes, sir.

6 Q. And it was leased after you seized his other car?

7 A. Yes, sir.

8 Q. The motorcycle was purchased after you seized his
9 car?

10 A. We believe it probably was, yes, sir.

11 Q. All the items depicted in these photos -- Exhibits
12 32 through, I believe, 43, if I have the numbers correct --
13 were any of those items seized as evidence in this case?

14 A. I believe the Garmin software was seized as
15 evidence. I believe the handgun was seized as evidence.

16 Q. And in fact, the registration check was run on
17 that handgun that showed Mr. Democker bought it here in
18 Prescott in 1997; correct?

19 A. Yes, sir, around that time frame. I would have to
20 refer to my notes, but I believe that does not seem
21 inaccurate.

22 Q. Do you have notes with you that would confirm
23 that?

24 A. I'd have to look through the reports, but I
25 believe that sounds accurate. I wouldn't argue with you.

1 Q. The gun wasn't stolen. It was registered to
2 Mr. Democker; correct?

3 A. Yes, sir. We are not contending it was stolen.

4 Q. And he had owned it for a number of years;
5 correct?

6 A. Yes, sir.

7 Q. Other than that handgun, do you know of anything
8 else that was depicted in these photographs that was seized
9 by the police, including the motorcycle itself?

10 A. As I stated, the software, the GPS software.

11 Q. GPS software.

12 And how about the GPS unit itself?

13 A. We do have a GPS unit. I was not at that scene.
14 I was not at the scene where they took other items.

15 Detective Brown has, perhaps, a better
16 overview of that portion of it, and he may be able to testify
17 to that.

18 MR. SEARS: No objection.

19 THE COURT: 34 through 43 are admitted.

20 DIRECT EXAMINATION RESUMED

21 BY MR. AINLEY:

22 Q. Detective, before we leave the Grand Jury
23 transcript, have you, since your testimony on October 31st,
24 found out that anything that you testified to during that
25 hearing was inaccurate?

1 A. Yes.

2 Q. What specifically, please?

3 A. A clarification needs to be made on some items,
4 and I kind of -- as I was reading the Grand Jury transcript,
5 I went in chronological order, and I noted some things that
6 need clarification.

7 Q. What is the first item?

8 A. Reference the bookshelf.

9 Q. What about the bookshelf?

10 A. I had been told by the detective at the scene that
11 when the blood spatter hit the bookshelf, obviously, it was
12 wet. There was a corresponding directional change of that
13 blood drop when the bookshelf was moved.

14 I read Detective Lieutenant Rhodes'
15 report, which was not available to me until after Grand Jury.
16 When I read that report, I noted where he had made a
17 statement that the blood had been dried on the bookshelf.

18 I have since come to learn that was the
19 case. And that does not change the fact that the bookshelf
20 was moved, just the fact of when the timing of when that
21 bookshelf would be moved took place.

22 I can kind of illustrate it, if you'd
23 like.

24 Q. Yes, please.

25 A. If this is the face of the bookshelf and the blood

1 this to the attention of Detective Brown, and I asked him if
2 Mr. Democker had stated this and how come it's not in the
3 transcript.

4 Detective Brown subsequently did some
5 further investigation, listened to the tape again. He could
6 not find that portion of it. Mr. Democker did make other
7 comments to that effect, but not that comment. And so we
8 notified the County Attorney's office of that.

9 MR. SEARS: Do you have a page reference,
10 Mr. Ainley?

11 MR. AINLEY: Do you have a page reference on
12 that?

13 THE WITNESS: For the Grand Jury transcript?
14 BY MR. AINLEY:

15 Q. Yes, please.

16 A. 21.

17 Q. Page 21. Lines 12 through 16, I believe.

18 Sir, what was the next thing that you
19 noticed when you reviewed the Grand Jury transcript?

20 A. Again -- actually, this was in reviewing, again,
21 the transcript of Detective Brown's interview with
22 Mr. Democker, which, again, was not available to me until
23 after the Grand Jury testimony.

24 When I read the Grand Jury testimony, I
25 noted that -- I'm sorry. When I read Mr. Democker's

1 interview with Detective Brown, I noted where Mr. Democker
2 had stated that this would be -- his second spousal support
3 payment was due July 1st. I had been under the impression
4 that it was June 1st, based on what I was told by other
5 officers, and that is what I testified to.

6 I brought this to the attention of
7 Detective Brown. Detective Brown subsequently looked into
8 it, discovered that the first payment was indeed due on
9 July 1st.

10 THE COURT: Was or was not?

11 THE WITNESS: Was, sir, due on July 1st.

12 That would have been the second payment,
13 July 1st. And this information was given to the County
14 Attorney's office.

15 BY MR. AINLEY:

16 Q. What page was that reference made on, please?

17 A. 26.

18 Q. All right. Anything else that you found in
19 reviewing the Grand Jury transcript?

20 A. Yes. In reviewing the Grand Jury transcript
21 itself, I noted that the date of arrest was wrong on the
22 Grand Jury transcript. They had August 24 down there when,
23 in fact, Mr. Democker was arrested on October 23rd.

24 I am quite certain that I told them that
25 when I testified. I said October. There is a possibility I

1 may have said the 24th instead of the 23rd. There may have
2 been a shared blame between the court reporter and me. I do
3 believe I testified to October, and perhaps I was
4 misunderstood.

5 Q. What page is that on?

6 A. That one, I am not sure about.

7 THE COURT: Page 36.

8 THE WITNESS: Yes, sir.

9 BY MR. AINLEY:

10 Q. Is it your belief that that is simply a
11 transcription error by the court reporter?

12 A. I believe the date -- or the month was. I may
13 have said the 24th inadvertently.

14 Q. All right. Anything else that you found in
15 reviewing the Grand Jury transcript that you subsequently
16 discovered was not accurate?

17 A. Yes. Regarding the fingernail clippers. I made a
18 statement that I believe those clippers were not sterilized.
19 I do not know that for a fact. I had been told by other
20 officers that -- or led to believe that those items were not
21 cleaned and that they were thrown into a drawer.

22 Detective Brown subsequently told me that
23 Karen Gere had mentioned that they were probably cleaned or
24 usually cleaned. Karen Gere is an assistant at the medical
25 examiner's office in Prescott. She said they are usually

1 cleaned. There is, however, no procedure for cleaning.
2 There is no sterilization process, per se. They do not have
3 sterilization machines there.

4 But I wanted to clarify that point,
5 because I can't say that for certain.

6 Q. And what page is that located on in the
7 transcript?

8 A. I believe at 42.

9 Q. 42?

10 A. Yes, sir.

11 Q. Anything else that you found in your review of the
12 Grand Jury transcript?

13 A. Yes. After Grand Jury, after talking to Detective
14 Brown, I had made a statement during Grand Jury that
15 Mr. Democker belonged to an escort service. I'm not sure if
16 that is the case or not. In fact, we haven't found any
17 evidence of that. He did belong to a dating service called
18 "Great Expectations."

19 Q. What page is that located on, sir?

20 THE COURT: 58. Does that sound right?

21 THE WITNESS: Can you direct me to where you
22 are at, sir, on that.

23 THE COURT: I don't have the transcript.

24 THE WITNESS: Yes. 58, line 20.

25 MR. AINLEY: Thank you.

1 Q. Anything else that you found in reviewing the
2 Grand Jury transcript?

3 A. No, sir.

4 Q. Subsequent to Grand Jury -- your Grand Jury
5 testimony, did other investigations continue?

6 A. Yes.

7 Q. Did you review Mr. Democker's credit card receipts
8 after -- or continue to monitor his credit card receipts
9 after the homicide occurred?

10 A. Yes.

11 Q. At the time that the -- July of 2008 -- shortly
12 after the homicide -- was Mr. Democker's passport seized by
13 officers?

14 A. Yes. It was seized on July 3rd.

15 Q. Was Mr. Democker given a receipt for this
16 passport?

17 A. Yes, sir.

18 Q. I am going to show you what has been marked as
19 exhibits -- Officer, I am going to show you Exhibits, 46, 47,
20 48, and 49 in one packet, because that is the way they all
21 came in.

22 Do you recognize those documents?

23 A. Yes, sir.

24 Q. Let's go back to Mr. Democker's credit card use.

25 Did you at some point in time notice a

1 payment made by Mr. Democker to the State Department?

2 A. Detective Brown did.

3 Q. When was that made?

4 A. July 16. It doesn't say "State Department." It
5 says "passport San Fran," and then "p-a-y-m-e-n." It was for
6 \$75.

7 Q. Based on observing that payment on his credit card
8 receipts, what did you do?

9 A. Well, even prior to that, we had contacted the
10 State Department to try to determine if Mr. Democker had
11 attempted to get a passport after the arrest, and we
12 continued working on that.

13 We just recently received the information
14 that it appears that he did indeed apply for another passport
15 on July 11, '08.

16 Q. Is this the documentation, Exhibits 46 through 49,
17 that you received from the State Department concerning
18 Mr. Democker?

19 A. I don't believe these came directly from the State
20 Department. They came from another source.

21 We are waiting for, I believe, certified
22 copies regarding that.

23 Q. But these are the copies that were brought in and
24 were received in answer to your inquiry?

25 A. Yes, essentially.

1 MR. AINLEY: The State moves for the admission
2 of Exhibits 46 through 49.

3 MR. SEARS: I have a few questions, your
4 Honor.

5 THE COURT: You may.

6 VOIR DIRE EXAMINATION

7 BY MR. SEARS:

8 Q. Detective, in addition to Mr. Democker's original
9 passport, virtually all of his other identification --
10 driver's license, credit cards -- were all seized pursuant to
11 search warrants; correct?

12 A. Sir, I don't have real intimate knowledge of what
13 was taken on July 3rd. On specific items, perhaps.

14 I wasn't brought into this case until
15 practically October. For a very definitive answer to that,
16 you may want to ask Detective Brown.

17 Q. You never reviewed the evidence box in this case
18 to see what you had to work with?

19 A. I reviewed the evidence, but there is a huge
20 volume of things, and I can't retain it all.

21 Q. So you are not the proper witness today to tell us
22 what other identification and personal property of my client
23 was seized in addition to his passport and such. Is that
24 what you are saying?

25 A. I would say I am not real comfortable to

1 testifying to something where I wasn't there.

2 Q. And if I understand what you are saying, is there
3 is an entry that maybe payment was made of \$75 by
4 Mr. Democker for this replacement passport about July 15 of
5 this year; is that right?

6 A. I believe it was July 16, sir.

7 Q. The application was dated a few days before that,
8 maybe July 11?

9 A. It appears to be July 11, '08.

10 Q. That would have been just days after this case
11 began; correct?

12 A. Yes.

13 Q. Do you have any indication, at this point, whether
14 Mr. Democker used the replacement passport to travel outside
15 the United States after it was obtained?

16 A. No, sir. I don't even know if Mr. Democker
17 obtained a passport. I know he applied for one.

18 Q. Is one of the photographs you have in front of
19 you, one of the exhibits, purportedly a new passport or
20 replacement passport?

21 A. Yes. I believe this would be Mr. Democker's
22 original passport.

23 Q. The number on that, sir? The exhibit number?

24 A. 46.

25 Q. Thank you.

1 A. That is what it appears to be.

2 And this would be -- this would appear to
3 be documentation associated with the July 11th application.

4 Q. And in your right hand are you holding Exhibit 46
5 again, or is that another passport?

6 THE COURT: The number on the back of the --

7 THE WITNESS: Yes. 48 and 49.

8 48 is dated July 11 of '08.

9 49 is dated July 11 of '08.

10 Item No. 47 does have a stamp from the
11 Department of State, July 16, '08, San Francisco, California.

12 BY MR. SEARS:

13 Q. Do I understand you to say here today that you are
14 just not sure whether Mr. Democker was actually issued a
15 passport as a result of this July 11th application?

16 A. That's correct. We are still waiting for
17 information from the State Department. We do know that he
18 applied for one.

19 Q. And in all the search warrants that you executed
20 at the time he was arrested; on his apartment in Scottsdale,
21 his office in Phoenix, his office in Prescott, his residence
22 in Prescott, the various storage units affiliated with
23 Mr. Democker -- in your search of all those things, did you
24 find a second passport?

25 A. Not to my knowledge.

1 MR. SEARS: Thank you. No objection.

2 THE COURT: 46, 47, 48, and 49 are admitted.

3 DIRECT EXAMINATION RESUMED

4 BY MR. AINLEY:

5 Q. Sir, I would like to bring your attention to
6 Exhibit 48. I think you said this was dated --

7 A. July 11.

8 Q. -- July 11th. And his other passport was seized
9 on --

10 A. 3rd.

11 Q. -- July 3. So nine days difference?

12 A. Eight days.

13 Q. Eight days difference.

14 What did Mr. Democker put down as the
15 reason why he needed a new passport.

16 A. Would you like me to read the question as it is
17 presented on the application?

18 Q. Yes.

19 A. "How, where, and on what date did the loss or
20 theft take place?"

21 There is a corresponding question prior
22 to that: "What passport agency, embassy, or consultation
23 issued you a lost or stolen passport?"

24 Mr. Democker wrote, "It was either."

25 The next question is: "How, when, and on

1 what date did the loss or theft take place? If lost, what
2 efforts were made to recover the passport?"

3 The answer given is: Quote, "Don't know
4 for certain. It is simply missing from my file at home, and
5 we cannot find it." End quote.

6 Q. And yet Mr. Democker was issued a receipt for his
7 passport when it was seized nine days earlier; correct?

8 A. Eight days earlier, yes, sir.

9 Q. Is it a federal crime to falsify an answer on a
10 passport application?

11 MR. SEARS: Foundation.

12 THE COURT: Sustained.

13 BY MR. AINLEY:

14 Q. Sir, has other investigation continued concerning
15 Mr. Democker in the area of his financials?

16 A. Yes, sir.

17 Q. Who has been brought in to consult on this
18 particular area?

19 A. A gentleman by the name of Richard Echols,
20 E-c-h-o-l-s.

21 Q. Who is Richard Echols?

22 A. Richard Echols is a certified fraud examiner for
23 R.M.I.N., which is Rocky Mountain Information Network.

24 Q. Why was Mr. Echols brought in?

25 A. There is a large amount of information regarding

1 Mr. Democker's taxes, divorce papers, things of that nature.
2 We wanted a professional to look at it -- somebody that has
3 background and training in that area.

4 Q. What has Mr. Echols found so far?

5 MR. SEARS: Objection. This has not been
6 disclosed. The statement of the witness about somebody
7 else's statement. There's been no report given. His name
8 has not been provided to us. No such information has been
9 disclosed.

10 Simpson talks about what the appropriate
11 disclosure is, in this case, and it's the statements of the
12 witness that testified. This witness wants to tell us what
13 an absent witness would say.

14 THE COURT: Hearsay is admissible in a Simpson
15 hearing. That is pretty clear. But in terms of disclosure,
16 has there been any?

17 MR. AINLEY: No, because it is ongoing at this
18 point in time.

19 THE COURT: I think due process would require
20 some degree of disclosure prior to today.

21 Sustained.

22 MR. AINLEY: All right.

23 Q. What avenue are you investigating concerning
24 Mr. Democker's financial status related to his divorce?

25 A. Am I investigating, or are we having investigated?

1 Q. You are the lead investigator in this case; right?

2 A. Yes, sir. Under the umbrella of that, we are
3 seeking to believe -- or we believe and we have good
4 information from our certified fraud examiner that
5 Mr. Democker was --

6 MR. SEARS: Your Honor, I hate to interrupt
7 the witness --

8 THE COURT: I'll strike the portion referring
9 to what the financial examiner is saying.

10 The question is asking what you are doing
11 in terms of the investigation. So without going into the
12 details of what anybody may have told you so far.

13 THE WITNESS: Falsifying financial records
14 regarding the divorce, filing a false financial affidavit to
15 the courts regarding divorce, filing false information on tax
16 returns.

17 BY MR. AINLEY:

18 Q. Was this course of investigation supported by
19 Ms. Wallace, the tax preparer for Carol Kennedy?

20 A. Yes.

21 MR. SEARS: Same objection. We have no
22 disclosure about any statements made by a Ms. Wallace in this
23 case. I would have the same motion to strike.

24 THE COURT: Mr. Ainley.

25 MR. AINLEY: Actually, I believe that this has

1 | been disclosed. Let me check with my paralegal.

The entire book of the financials that were provided that had been reviewed by Miss Wallace was provided to the defense, and I believe the testimony or the report -- written report of Detective Brown concerning his conversations with Ms. Wallace was disclosed.

7 MR. SEARS: I don't believe that is correct,
8 your Honor. And if someone could provide me with a
9 reference -- we have all of the disclosure here in the
10 courtroom. Every form has been provided to us, but I don't
11 have anything --

12 THE COURT: I presume those were Bates-stamped
13 in some fashion?

14 MR. SEARS: Some documents were also provided
15 to us -- we have something in the neighborhood of a hundred
16 CDs that were provided. And they're not just photographs,
17 there are documents on some of these CDs that are not
18 Bates-stamped.

19 Between the 2500-plus pages of written
20 discovery and the CDs, I don't think this happened, because
21 there is some reference in Detective McDormett's testimony at
22 the end of his presentation to the Grand Jury about this
23 ongoing investigation. And I have been waiting for something
24 connected to it since then, and I have not seen it.

25 THE COURT: You said it was referenced in

1 Detective Brown's --

2 MR. AINLEY: We were up to over 70
3 supplements, at this point, Judge. I can't put my finger on
4 it and say it's --

5 THE WITNESS: July 7, if that helps, is the
6 date that Detective Brown spoke to Cynthia Wallace. July 7th
7 of '08 is when Detective Brown spoke to Detective Wallace.

8 THE COURT: You can have the paralegal
9 approach and see if -- see if there can be a Bates reference.

10 MR. AINLEY: The documents that were provided
11 by Wallace and Associates are Bates-stamped 709 through 794.

12 THE COURT: Given that avow and
13 representation, I will overrule the objection.

14 MR. SEARS: Your Honor, I am just now flipping
15 through those Bates numbers, and I have a more specific
16 objection to the particular question and testimony of the
17 witness relating an opinion.

18 What these documents are, your Honor, are
19 tax returns and financial records submitted in person. There
20 is no report from anybody named Cynthia Wallace connected in
21 this disclosure. That is all we have gotten, and the
22 detective is testifying that Cynthia Wallace has given some
23 opinion or made some statement about this which we don't
24 have.

25 THE COURT: Restate the question, Mr. Ainley.

1 I think I lost track of what the question called for.

2 MR. AINLEY: I have, too.

3 Q. Based on the information obtained from
4 Ms. Wallace, what is the current direction of your
5 investigation concerning Mr. Democker's financials relating
6 to the divorce?

7 A. That Mr. Democker was -- reference Wallace, that
8 Mr. Democker had fraudulently filed a 2007 tax return.

9 Q. Was Miss Kennedy aware of that?

10 MR. SEARS: Objection. Foundation.
11 Speculation. She is deceased, your Honor.

12 THE COURT: Sustained.

13 BY MR. AINLEY:

14 Q. Do you know from some source that Ms. Kennedy was
15 aware of that?

16 MR. SEARS: Same objection.

17 THE COURT: Overruled. Just calls for a yes
18 or no.

19 THE WITNESS: Yes.

20 BY MR. AINLEY:

21 Q. What was the source of that information?

22 A. I believe we have an e-mail to that effect, or we
23 had some type of documentation that Cynthia Wallace had from
24 Carol Kennedy.

25 Q. What was the nature of this e-mail?

1 A. I would have to locate that. And, if I could,
2 Detective Brown may have a -- may be able to answer that more
3 succinctly than I can.

4 Q. Anything else, Detective? Any other subject of
5 investigation that you have pursued since your testimony
6 before the Grand Jury that impacts on this investigation?

7 A. We are investigating the financial aspect of
8 things. We are looking through Mr. Democker's and Carol
9 Kennedy's computers, and we are continuing to work with that.

10 Q. And Detective Page is here today to testify
11 concerning Mr. Democker's computer; is that correct?

12 A. Yes, sir.

13 MR. AINLEY: Thank you, sir. I don't think I
14 have any other questions for you at this time.

15 THE COURT: Do you need a break at this point?

16 THE WITNESS: I appreciate that, but I think I
17 can hang in there for a while.

18 THE COURT: Let's proceed with cross.

19 CROSS-EXAMINATION

20 BY MR. SEARS:

21 Q. Detective, if you are not feeling well at any
22 point, just let the judge know and we will take a break. I
23 understand what it's like to be ill.

24 Let's talk about, if we could, your
25 background and experience. I don't believe you and I have

1 ever had a case together. I was having difficulty hearing
2 you from the beginning of the testimony.

3 How long have you been with the Yavapai
4 County sheriff's office?

5 A. Since January of 2000.

6 Q. What was your law enforcement employment prior to
7 January 2000?

8 A. I worked for the Will County sheriff's office,
9 which is a -- Will County is a collar county of Cook County,
10 and Cook County is where Chicago is.

11 Q. When you worked in Illinois, what were your law
12 enforcement duties?

13 A. I was a certified deputy. I also worked in the
14 jail.

15 Q. So you did detention services and worked as a
16 patrol deputy; is that right?

17 A. Due to budget cuts, I went to the law enforcement
18 academy, was a certified officer. I also was a certified
19 corrections officer, and I primarily did the detention stuff.

20 Q. And for how many years were you employed at
21 Illinois before you moved to Yavapai County?

22 A. About five years.

23 Q. And did you do any homicide investigation work in
24 Illinois?

25 A. No, sir.

1 Q. So you come to Yavapai, and you are hired as a
2 deputy?

3 A. Yes, sir.

4 Q. And for how long are you a patrol deputy before
5 you become a detective?

6 A. January -- well, I went to the academy. Upon
7 graduation from the academy in May of 2000 until about April
8 of 2003, then I became a detective. So about three years.

9 Q. And you said that you've investigated, you think,
10 20 homicide cases in the five years you've been a detective
11 in Yavapai County; is that right?

12 A. Associated with either -- not as a case agent
13 wholly, either assisting other detectives with
14 investigations. I don't think I said -- I said around 20.
15 It seems to me to be about that number. I'd have to look it
16 up. I don't keep track of that stuff.

17 Q. In approximately how many of those cases do you
18 think you were actually the case agent?

19 A. Between five and ten.

20 Q. Have you ever testified at a trial in any of the
21 homicide cases in which you were the case agent in Yavapai
22 County?

23 A. At a trial, no.

24 Q. You testified at pretrial proceedings?

25 A. Yes, sir.

1 Q. Like today?

2 A. Never a Simpson hearing.

3 Q. Never a Simpson hearing. Okay.

4 Now, how is it that you came to be
5 assigned to this case so late in the game in October?

6 A. Detective Brown had been assigned to this case,
7 and I was told, about the end of September, that they wanted
8 somebody to -- that had some experience with major cases to
9 come in and handle the case -- organize it, delegate
10 authority, et cetera.

11 Q. So apparently, Detective Brown -- who we are going
12 to hear from in a bit here -- had less experience than you
13 did in being a case agent in a major homicide case like this
14 one?

15 A. Yes, sir.

16 Q. Had you ever worked with Detective Brown before?

17 A. Yeah. We both used to work out of the Verde
18 office, so -- not a great deal, but I believe we did a little
19 bit.

20 Q. When you testified before the Grand Jury on
21 October 31st, there were several places in the transcript in
22 which you tell the Grand Jury that Detective Brown would be a
23 better witness because he had more first-hand knowledge of
24 some of the matters than you did, much as you have done here
25 today; is that right?

1 A. Yes, sir.

2 Q. I assume that in a case as important as this one,
3 you have made a considerable effort to try and get up to
4 speed and to try and read and understand all of the work that
5 was done from July 2nd until you took the case at the end of
6 September; correct?

7 A. Yes, I have.

8 Q. And you talked to other detectives and listened to
9 interviews and read reports; is that right?

10 A. Correct.

11 Q. Nonetheless, you were not at the scene at Bridle
12 Path, where this took place, on any of the dates when law
13 enforcement were in there processing that crime scene; is
14 that right?

15 A. That's correct, sir.

16 Q. You were not present for any of the searches of my
17 client's residences connected with the search warrants issued
18 in the first part of July of this year; correct?

19 A. Yes, sir.

20 Q. You were not connected with this case; is that
21 correct?

22 A. No, sir.

23 Q. And you have never spoken with my client; is that
24 right?

25 A. Not until October 23rd.

1 Q. Okay. You weren't part of any of the interviews
2 conducted with him the night that this happened; correct?

3 A. No, sir.

4 Q. And you obviously wouldn't have seen any of the
5 physical evidence, the pictures that we have seen of tire
6 tracks or bicycles -- you wouldn't have seen that in place,
7 because you were not connected with this case; is that right?

8 A. That's correct.

9 Q. Let's begin, if we could, with the photographs
10 that are in evidence.

11 The bicycle tire tracks, in this case.
12 Let me show you exhibits --

13 MR. SEARS: May I approach the witness, your
14 Honor?

15 THE COURT: You may.

16 BY MR. SEARS:

17 Q. Exhibits 11, 12, 10, and 9 -- or to put it another
18 way, 9, 10, 11, and 12.

19 You testified about these items; correct?

20 A. Yes, sir.

21 Q. Now, do you have any experience yourself in
22 tire-track -- particularly bicycle-tire track identification
23 and analysis?

24 A. Do I have any experience or training?

25 Q. Yes, sir.

1 A. Experience just based on observation.

2 Q. Do you have any particular training in the actual
3 preservation and analysis of tire-track evidence, either
4 automobile, motorcycle, or bicycle-tire tracks?

5 A. No.

6 Q. It is true, isn't it, that the tire-track imprints
7 that are shown in Exhibit 12 were not cast in plaster by any
8 police officer; correct?

9 A. That is my understanding.

10 Q. Just photographs were made; is that right?

11 A. Correct.

12 Q. And the basic idea is that sometime during the
13 early morning hours of July 3rd, police officers said that
14 they were able to find what they thought were bicycle-tire
15 tracks in an area not far from this scene; correct?

16 A. Yes, sir.

17 Q. Now, have you been out to the scene?

18 A. Yes, I have been out to the scene.

19 Q. Okay. If I could show you what I have marked for
20 identification as Exhibit 66.

21 MR. SEARS: Do we have an easel or something
22 we might be able to set this up on?

23 Can you see that, your Honor?

24 THE COURT: Thank you.

25 MR. AINLEY: Yes.

1 MR. SEARS: Exhibit 66 for identification is a
2 map that we created here of the streets in the general
3 vicinity of the scene.

4 Q. Can you see this exhibit?

5 A. Yes, sir.

6 Q. Do you recognize this yellow line as Williamson
7 Valley Road?

8 A. Yes.

9 Q. And do you see there is a little balloon with the
10 letter "A" in it. This red one here.

11 Do you recognize that as approximately
12 the location of the Bridle Path residence where this all
13 occurred?

14 A. That appears to be, yes.

15 MR. AINLEY: I would move Exhibit 66.

16 MR. AINLEY: No objection.

17 THE COURT: 66 is admitted.

18 MR. SEARS: Do we have a pointer, Phil?

19 THE BAILIFF: Do you have your laser, your
20 Honor?

21 MR. SEARS: I promise not to point it at the
22 officer. I understand that's a very serious offense.

23 I now have the Court's laser pointer, and
24 I am trying here to point to the area on Bridle Path where
25 this event occurred.

1 Q. Do you see where I am pointing?

2 A. Yes, sir.

3 Q. And is that your understanding of where this all
4 took place?

5 A. Yes, sir.

6 Q. Now heading out -- if you look at this map,
7 basically, this is a north-up map; isn't that right?

8 A. It appears correct, yes, sir.

9 Q. Okay. If you went out -- further out Williamson
10 Valley, past the turn down here for Bridle Path, at the lower
11 portion of 66 -- if you went out, eventually there's a road
12 called Glenshandra, G-l-e-n-s-h-a-n-d-r-a, Drive that comes
13 off to the east of Williamson Valley Road; is that right?

14 A. Yes, sir.

15 Q. And that road, Glenshandra, dead-ends, and there's
16 a locked gate and a fence at the end of that road; is that
17 right?

18 A. Yes, sir.

19 Q. Okay. And this area generally to the east of the
20 scene, that is shown in blank on Exhibit 66, is a combination
21 of sections of State trust land and private-deeded land that
22 belongs to the James family, the D-Bar Ranch.

23 Is that your understanding?

24 A. I wasn't sure who owned the land, sir, but I know
25 it is a wooded area with horse trails and other trails back

1 there.

2 Q. There is actually almost 10,000 acres of open land
3 that borders this property to the east and the north; is that
4 your understanding? It is a vast area of undeveloped land.

5 A. I know it's a big area. I don't know the exact
6 area.

7 Q. Okay. Now, the bicycle tire track that you have
8 in Exhibit 12 there, that is a bicycle tire track that police
9 located sometime in the early morning hours -- the daylight
10 hours of July 3rd, beginning at this locked gate at the end
11 of Glenshandra and in the general area heading south towards
12 and behind the Democker-Kennedy residence; correct?

13 A. Are you talking about the bike tracks?

14 Q. Yes.

15 A. That is not my understanding.

16 Q. Tell me what you think the location, then, is of
17 that bike track depicted in Exhibit 12.

18 A. My understanding -- this map is hard to make a
19 real reference here -- but there is some bush --

20 Q. You need to step away so the judge can see. You
21 want to use the laser pointer.

22 A. My understanding is the gate is right here. The
23 bike tracks were located approximately right here, and there
24 are some bushes right in this area. And that's where the
25 bike tracks were at.

1 Q. Okay. You are pointing to an area between the end
2 of Glenshandra, that is shown on Exhibit 66, and the "A"
3 balloon, that we indicated that is the location of the scene.

4 And you are saying that the tracks that
5 are depicted in Exhibit 12 are nearer to the end of
6 Glenshandra than they were to the Kennedy residence; is that
7 right?

8 A. That is my understanding.

9 Q. Did you ever go out and walk this yourself?

10 A. Yes, I did.

11 Q. Did somebody go with you and try to point it out
12 to you?

13 A. Can I sit?

14 Q. Please.

15 A. Repeat that.

16 Q. Did anyone who was familiar with the location,
17 identification of the tracks depicted in Exhibit 12,
18 accompany you to show you where these tracks were found?

19 A. Yes.

20 Q. Who was that?

21 A. Detective Sergeant Huante.

22 Q. Who is in the back of the courtroom here this
23 morning; correct?

24 A. Yes.

25 Q. And this photograph, Exhibit 12, is one of a

1 series of photographs of some bicycle tracks that were made
2 the next day; correct?

3 A. Yes, to my understanding.

4 Q. Okay. Well, let's talk about -- let's talk about
5 the location and the significance of these tire tracks.

6 Have you examined the tires of
7 Mr. Democker's bicycle?

8 A. I have looked at them.

9 Q. Who made them, and what is the model?

10 A. I don't know.

11 Q. It says right on the side of the tires that they
12 were made by a company called Wilderness Trail Bikes, WTB,
13 and they are the VelociRaptor model. It says right on the
14 side of tire.

15 A. It may.

16 Q. Have you done any research or studying, whatever,
17 about how common those bicycle tires are?

18 A. I have been told by other detectives that it is a
19 common bike track.

20 Q. In fact, Wilderness Trail Bikes, WTB, is one of
21 the leading, if not the leading, manufacturer/supplier of
22 mountain bike tires in North America. Did you know that?

23 A. No, but like I said, I was told by other
24 detectives that it is a very common tire.

25 Q. And in fact, the tire tracks that you look at and

1 the tire tracks that -- a VelociRaptor set, have one common
2 significance: the two tires -- the front and the back -- are
3 different tread patterns. Did you know that?

4 A. That could be the case.

5 Q. Do you know when the tire tracks in Exhibit 12
6 were made?

7 A. Based on -- do I know for certain?

8 Q. Yes.

9 A. No, I don't.

10 Q. You don't.

11 Now, you testified before the Grand Jury
12 about information that you received about rain in the
13 immediate vicinity where the tire tracks were located around
14 the time of this investigation; is that right?

15 A. Yes.

16 Q. What is the source of the testimony that you gave
17 to the Grand Jury?

18 A. The detectives had told me that they spoke to
19 neighbors that were at the scene. Neighbors had stated that
20 it had rained earlier that day.

21 Q. In fact, weather records from a weather station on
22 Glenshandra, right here, affiliated with a site on the
23 Internet called "Weather Underground" -- internationally
24 known site -- say that it didn't rain on July 2nd. It rained
25 on July 1st in the late afternoon, and it rained

1 approximately 4/100 of an inch.

2 Are you aware of that?

3 A. I didn't access that Website.

4 Q. Okay. Looking at Exhibit 12, that looks like a
5 dusty area of ground with some tire tracks on it, doesn't it?

6 A. Based on just this photograph, I would say that
7 that could be correct. It was dusty at the time it was
8 taken.

9 Q. 4/100 of a inch of rain would be just a trace of
10 rain; is that right? Barely measurable.

11 A. Yeah, it doesn't sound like much.

12 Q. And prior to that -- you've been in the Prescott
13 area, and it was a very, very dry period of time for weeks
14 and months before the rains began around the 1st of July;
15 isn't that right?

16 A. Yes. It's before monsoon season.

17 Q. And you can see from Exhibit 12 that that's not
18 mud that those tire tracks were put in. You can see that
19 right from that Exhibit 12, can't you?

20 A. From that exhibit, it does not appear to be mud.

21 Q. Now, do you have any idea how many sets of
22 VelociRaptor bicycle tires are in use in the Prescott area
23 today?

24 A. I don't.

25 Q. Do you know much about mountain bikes or mountain

1 bike tires yourself?

2 A. Not a whole lot.

3 Q. Okay. By the time you looked at this -- I presume
4 it would have been after September of this year you went out
5 with Detective Sergeant Huante -- the tire tracks that are in
6 these photographs that you looked at were no longer visible;
7 is that right?

8 A. Yes, sir.

9 Q. Nonetheless, this is a fairly heavily used area
10 where these tire tracks were. There are hoof prints,
11 footprints, bicycle tracks, all kinds of tracks on these
12 trails that crisscross this area; correct?

13 A. I am not familiar with how much use those trails
14 get.

15 Q. The gate at the end of Glenshandra has a lock on
16 it, doesn't it?

17 A. Yes.

18 Q. Do you have any reason to believe that
19 Mr. Democker had a key to that lock?

20 A. I don't know if he did or not.

21 Q. Who put the lock on there?

22 A. I don't know, sir.

23 Q. Is there any signage on the fence near the lock
24 talking about access to the property behind the gate and
25 behind the lock?

1 A. I don't recall.

2 Q. It's private property or State land, apparently;
3 is that right?

4 A. My understanding.

5 Q. There are no houses back behind that gate, are
6 there, that you saw?

7 A. No. There's houses bordering that land, but not
8 in the area of the trail.

9 Q. Okay. From the point that you were trying to
10 describe where the tire tracks ended, there were a series of
11 footprints that were located by police that went from that
12 spot towards the general vicinity of the rear of the Bridle
13 Path residence; is that right?

14 A. To my understanding, yes, sir.

15 Q. You have seen pictures of those footprints,
16 haven't you?

17 A. Yes.

18 Q. And in fact, in the search warrants executed both
19 in July and again in October, when my client was arrested,
20 specifically the search warrants included shoes that were
21 consistent with these footprints found in that area; isn't
22 that right?

23 A. I'm sorry. Could you repeat the question?

24 Q. Okay. Let's do it in pieces.

25 You have seen photographs and been told

1 by other officers that part of the theory in this case is
2 that there are bicycle tracks that begin in the general area
3 of this gate, that head out onto this open land and stop by
4 the bush; correct?

5 A. Correct.

6 Q. And that there were footprints -- you haven't
7 testified about it yet today, but you have seen reports and
8 you've heard from other officers that there were footprints
9 found from that point, some distance, heading in the general
10 vicinity of the Kennedy house; correct?

11 A. Correct.

12 Q. And those footprints were of a particular tread
13 pattern; correct? That's what you've been told?

14 A. Yes.

15 Q. And it's true, isn't it, that search warrants were
16 issued specifically searching for shoes owned by
17 Mr. Democker, under Mr. Democker's control, consistent with
18 that particular tread pattern for those footprints; correct?

19 A. Yes. Search warrants were issued looking for
20 shoes, at that time.

21 Q. And the first set of search warrants looking for
22 shoes were done shortly after the body was discovered; isn't
23 that right?

24 A. Yes, sir.

25 Q. Police went to Mr. Democker's home and took lots

1 of pairs of shoes, which are still in evidence; correct?

2 A. I am not sure if they took them or if they
3 photographed the bottoms of them, but regardless --

4 Q. Again, you would have to look at the evidence
5 logs, I suppose, to see what was taken.

6 Would it surprise you if I told you that
7 the evidence logs show many, many pairs of shoes seized from
8 my client's residence?

9 A. Maybe I misunderstood your question. I thought
10 you said all of his shoes.

11 I know some of them were taken. I don't
12 know how many in relationship to how many shoes Mr. Democker
13 had.

14 Q. And when that search warrant was executed for
15 Mr. Democker's residence in Prescott -- first, he had not yet
16 leased the Scottsdale apartment at the time of the first
17 search; isn't that true?

18 A. Yes.

19 Q. So as far as the police know today, the only
20 residence of Mr. Democker was the one in Alpine Meadows here
21 in Prescott; is that right? He didn't have another residence
22 someplace else on July 3rd, 2008; is that right?

23 A. Not that he owned, except for the Bridle Path.

24 Q. But he lived at Alpine Meadows. It's pretty
25 clear --

1 A. Yes, he lived at Alpine Meadows.

2 Q. There is no indication that he had lived for years
3 at Bridle Path; correct?

4 A. Correct.

5 Q. Now, when the police went to Mr. Democker's house
6 looking for shoes, Mr. Democker had been detained at the
7 sheriff's office and was not permitted to go back to his
8 house before that first search warrant was executed; isn't
9 that right?

10 A. That is my understanding.

11 Q. Okay. And that's the search warrant where shoes
12 were taken -- the first search warrant issued the morning of
13 July 3rd, the day after these events; correct?

14 A. Yes, sir.

15 Q. Mr. Democker had told Detective Brown that he was
16 riding a bicycle that had what are called "clipless pedals."
17 Do you know what those are?

18 A. Before this case, I didn't know.

19 Q. You have come to learn that clipless pedals on a
20 bicycle are a kind of pedal -- they're sort of like a ski
21 binding, where you have a bicycle shoe that has a cleat on
22 the sole that attaches to the corresponding cleat on the
23 pedal; is that right?

24 A. Yes.

25 Q. So that the shoe and the peddle become essentially

1 one, and that makes it easier to pedal; correct?

2 A. Yes, sir.

3 Q. And Mr. Democker told Detective Brown that he was
4 wearing red cycling shoes on the day that this happened that
5 had clipless pedal attachments on it. That's what he said.

6 A. That's what he told Detective Brown.

7 Q. Okay. And in fact, his red bicycle shoes and
8 another pair of bicycle shoes with similar clips were seized
9 from his residence that first morning; isn't that right?

10 A. From my understanding.

11 Q. Okay. And there is no footprint located by the
12 police anywhere connected with this -- near the Bridle Path
13 house, on the Bridle Path property, behind the Bridle Path
14 property -- there is no footprint located by the police while
15 the evidence was still fresh that is consistent with the
16 bicycle shoes that Mr. Democker said he was wearing that
17 night; correct?

18 A. It is my understanding there were no impressions
19 made by a clip-on type shoe.

20 Q. And in fact, there was no shoe seized by the
21 police -- no hiking boot, no running shoe, no sandal -- no
22 shoe of any kind, no footwear of any kind -- either in July
23 of this year or again in October, when a new set of search
24 warrants were authorized now not only searching his home,
25 again, but also searching his apartment in Scottsdale.

1 You were still looking for shoes in
2 October when you arrested Mr. Democker that might have made
3 the footprints that were discovered from the place where the
4 bicycle tracks ended towards the house; is that right?

5 A. No, sir.

6 Q. No, it's not right?

7 A. Yes, that's right.

8 Q. It's right. It's right.

9 So, as we sit here today on December
10 23rd, coming up six months from this event, the police have
11 never located any shoe connected to my client -- bicycle shoe
12 or otherwise -- that is associated with these footprints that
13 they say are relevant to this case.

14 A. Correct.

15 Q. Now, let's talk about the investigation of where
16 Mr. Democker said he was.

17 Mr. Democker told Detective Brown that on
18 the night that this happened, the evening of July 2nd, 2008,
19 he had gone by himself on a mountain bike ride not far from
20 where this happened. Isn't that what he told the police?

21 A. Yes, sir.

22 Q. And what he said was that he had left his home
23 sometime in the early evening, got home about 5:00, did some
24 things, and left his home, and drove out with his bike in the
25 car -- the bike that we have a photograph here -- by himself,

1 and went on a mountain bike ride, not on the same side of
2 Williamson Valley Road where this happened but on the other
3 side of Williamson Valley Road on some trails, some hiking
4 and horseback riding and biking trails; is that right?

5 A. Yes, sir.

6 Q. Now, have you personally been out on any of the
7 trails where Mr. Democker said he was that night?

8 A. I have not been on the trails. I was shown the
9 location of where those trails were on Love Lane.

10 Q. Let me, if I could, get another exhibit here.
11 This is 64 for identification. And I will tell you that this
12 is a blowup of a portion of a forest-service map for trails
13 in the Williamson Valley -- I lost the -- it's in my pocket.

14 I will tell you this is a forest-service
15 map of the trails that are associated with this event. And
16 here, up in the upper right-hand corner of 64 for
17 identification, you can see the streets. There is a street
18 called Rainmaker. There is a street called Love Lane. There
19 is a little cul-de-sac called Boone Court, and then there is
20 a trail.

21 Does this map show you a trail system
22 that you believe is connected with the investigation in this
23 case?

24 A. It appears to be.

25 Q. Have you ever seen this particular map before or

1 the forest-service map from which it is excerpted?

2 A. I don't recall.

3 Q. Okay. Let's see if we can orient here. This red
4 line up in the corner here, I will tell you, is a little
5 piece of Williamson Valley Road.

6 Have you been on these streets on what
7 would be the west side -- if you look back at the 66
8 exhibit -- to orient you, again, we are looking at Rainmaker
9 here, and here is Boone Court up here, and Rainmaker goes up
10 and ends up here.

11 Have you been on those roads?

12 A. I have been on some of those roads, sir, yes.

13 THE COURT: If you shake that a little bit.
14 There is a short or something.

15 MR. SEARS: Maybe I could have my technical
16 advisor here.

17 THE COURT: Maybe it needs a battery.

18 MR. SEARS: Maybe at the break we can get an
19 old-school pointer.

20 Q. Mr. Democker told Detective Brown the following:
21 That on the evening of July 2nd, he came out from where he
22 lived -- south of this location -- drove out by himself in
23 the evening, intending to take a bicycle ride. First, he
24 went out Williamson Valley Road, past Bridle Path, past
25 Rainmaker, to the Williamson Valley trailhead, which is off

1 this exhibit. Isn't that what you said?

2 A. That appears to be correct.

3 Q. And he got there and decided that instead of
4 starting his ride at Williamson Valley trailhead -- because
5 he said he saw other people there, a lot of people -- he
6 doubled back and came down and turned up Rainmaker and drove
7 all the way up what's a pretty steep hill. You can see from
8 this topographic map that the contours get closer and closer
9 as you head up here. And your recollection is it's an
10 uphill; isn't that right?

11 A. Yes, sir.

12 Q. When you get up onto Rainmaker, at the very end it
13 turns, and there are some pretty spectacular views from the
14 highest point up there. You can see off, you can see the San
15 Francisco Peaks and you can see a great distance; isn't that
16 right?

17 A. Yeah, I really didn't stop to enjoy the views, but
18 I saw the outlay of the valley down there, yes.

19 Q. And at the very top of Rainmaker there are no
20 houses. As you go up Rainmaker and up that area, there are
21 some houses. And as you get up towards the top, the houses
22 get larger and larger. At the very end of Rainmaker, there
23 are just lots for sale. There are no houses on the stretch
24 up here; isn't that right?

25 A. Yes, sir.

1 Q. Do you need to take a break, Detective?

2 A. Can I take about two or three minutes?

3 THE COURT: We will take a break.

4 (Brief Recess.)

5 THE COURT: The record reflects both counsel,
6 the defendant, and the detective are still on the stand.

7 Mr. Sears.

8 MR. SEARS: Thank you, your Honor.

9 Your Honor, at this time I would move
10 Exhibit 64, which is this forest-service map.

11 MR. AINLEY: No objection.

12 THE COURT: 64 is admitted.

13 MR. SEARS: Thank you.

14 CROSS-EXAMINATION CONTINUED

15 BY MR. SEARS:

16 Q. Going back to Exhibit 64 here, Detective, from
17 your understanding, from your conversation with Detective
18 Brown, in reading the reports and interview transcript
19 conducted of my client, he said that he parked his car up
20 here at the end of Rainmaker; isn't that right, that night?

21 A. I believe so.

22 Q. And that he headed down and got onto this Trail
23 309 and then headed south on Trail 347 -- as I am doing it
24 with the newly illuminated laser pointer -- until he got to
25 this intersection here, where 348 goes down the hill, 347

1 continues south. And he continued on 347 down through this
2 gate here, to an area just past the gate, where he got a flat
3 tire on the back tire of his bike. Isn't that what he said?

4 A. I don't recall the exact terminology. You'd
5 probably have to ask Detective Brown those questions.

6 Q. You mean to say that you haven't -- at this date
7 on December 23rd -- formed a clear picture in your mind of
8 the route that my client said, the night of these events,
9 that he traveled on his bike?

10 A. I don't recall the number of the trails.

11 Q. How many miles, if you know, from this furthest
12 point down here on this trail, all the way back up to the
13 Bridle Path location? Do you have any idea how many miles
14 that is?

15 A. No, sir.

16 Q. It's certainly not across the street from the
17 Bridle Path location, is it?

18 A. That location is not.

19 Q. No. So any suggestion to the Grand Jury that my
20 client had said that he was riding his bike that night across
21 the street from the Bridle Path location is really an
22 exaggeration, isn't it?

23 A. I don't believe so. He stated that he had parked
24 his vehicle one mile -- approximately one mile from the
25 residence. The trail -- there are portions of that trail

1 that are, in effect, right across the street from
2 Carol Kennedy's neighborhood.

3 Q. Okay. If I told you that using a car odometer --
4 looking back at Exhibit 66 -- from the intersection of
5 Williamson Valley Road and Bridle Path down here, straight up
6 Bridle Path to the residence is a distance of approximately
7 one mile.

8 Is that your understanding?

9 A. I don't see a scale on that.

10 Q. Do you know? Have you ever bothered measuring it?

11 A. I haven't measured that particular distance. We
12 are not sure which path he took to get over to Bridle Path.

13 Q. Well, let's be clear. Mr. Democker never said to
14 the police at any time during this multi-hour interview that
15 he was riding his bicycle anywhere on the east side of
16 Williamson Valley Road; isn't that right? He never said once
17 that he was over on this side of Williamson Valley Road where
18 Bridle Path is located.

19 A. I would agree with that.

20 Q. Okay. And, in fact, what he said was he parked
21 his vehicle down here at the very end of Rainmaker, on the
22 map here, rode it back around and got on the trail which goes
23 down Harris to Love Lane, down this little spur, and then the
24 trail -- which we can see more clearly on 64 -- takes off --
25 it shows on this map from Boone Court -- but, in fact, this

1 little spur on Love Lane up here -- this little spur here
2 actually connects right into Trail 309, doesn't it?

3 A. I don't know. I don't know.

4 Q. You don't know?

5 A. No, sir. From my understanding, there is a rock
6 portion of that trail that is near residences, and it may
7 connect to that trail. But as I testified to, I was not on
8 that trail myself.

9 Q. And you have never gone back out to look?

10 A. I haven't been on the bike trail.

11 Q. How about Love Lane here? As you come from
12 Williamson Valley Road up Love Lane, the first portion of
13 that is paved, isn't it?

14 A. Love Lane?

15 Q. Yes.

16 A. I believe so.

17 Q. And as you approach this little spur that goes off
18 to the left here, just before the intersection of Love Lane
19 and this little spur off to the south, the pavement on Love
20 Lane ends and it turns to rock and dirt, doesn't it?

21 A. From my understanding, Detective Brown and
22 Detective Sergeant Huante were out there.

23 Q. Okay. Well, maybe we'll ask Detective Brown for
24 more information. I just want to know what you know, if
25 anything, about this road.

1 It's fair to say, in general terms, that
2 my client described a bicycle ride in this general area from
3 Rainmaker onto Trail 309 and south on this trail system down
4 here to a point where he said that he got a flat tire --
5 whether you know where that point is or not. Isn't that what
6 he said?

7 A. Again, you need to speak to Detective Brown,
8 because I'm looking at a trail map that I was not shown
9 before.

10 Q. Let's pretend the map isn't here. Let's take the
11 map away. Let's talk about what you remember.

12 Didn't Mr. Democker tell Detective Brown,
13 in a lengthy interview, long before he was read his Miranda
14 rights, a voluntary statement to the police that night at the
15 police station, that he was riding his bike on the
16 Love Lane/Rainmaker side of Williamson Valley on the
17 connecting trails that head off to the south and west; isn't
18 that right?

19 A. I recall him stating that he was riding on the
20 trails that were on the west side of Williamson Valley Road.

21 Q. Which is the west side? The Granite Mountain
22 side; correct?

23 A. Yes.

24 Q. That is where he said he was?

25 A. Yes, sir.

1 Q. And he never once said that he rode his bike
2 anywhere on the other side of Williamson Valley Road, the
3 Bridle Path, Deep Well Ranch side?

4 A. That is correct.

5 Q. Now, he also said that he got a flat tire in the
6 midst of this ride; isn't that right?

7 A. Yes, sir.

8 Q. He was planning to do a long ride, but the ride
9 was made much longer because he had this flat tire -- which
10 you saw on his bike; right? When you looked at it, it had a
11 flat rear tire, didn't it?

12 A. Yeah.

13 Q. And that he told Detective Brown that he tried to
14 pump the rear tire up and ride for a little bit, but it
15 wouldn't hold air. So he wound up walking his bike, wearing
16 his bike shoes, most of the way back from the point where the
17 bike tire went flat; isn't that right?

18 A. That was Mr. Democker's story, yes.

19 Q. Okay. Now, let's go back and look at these
20 exhibits.

21 You know that about 4:30 on the morning
22 of July 3rd, after the police had now Mirandized my
23 client -- because they became suspicious while he was still
24 being detained at the police station -- Detective Sergeant
25 Huante and another detective, Jaramillo, went out to try to

1 find evidence -- tire tracks or other evidence in the area
2 where Mr. Democker said he had been riding; correct?

3 A. I believe so.

4 Q. Okay. And from their report of that, they came
5 up -- they didn't go up to Rainmaker. Instead, they went up
6 Love Lane and went down this little spur here. And you can
7 see on Exhibit 64 there is actually a house at the end of
8 that spur, isn't there?

9 A. Yes, if it is the same location that I am thinking
10 of when I was out there, there is a house there.

11 Q. Okay. They didn't knock on the door that morning
12 or ever again to ask the people that lived in that house or
13 this other house -- in fact, there is yet a third house on
14 there -- whether they had seen anything the previous evening,
15 the night of July 2nd, whether they had seen a guy on a
16 bicycle or anything like that. They never canvassed that
17 neighborhood, did they?

18 A. I believe Detective Brown did have contact with
19 those people at the house.

20 Q. What makes you say that?

21 A. I believe it is in his report.

22 Q. We would have to ask him, though?

23 A. I believe it is in his report but, yes, sir, he
24 would be the best source of that information.

25 Q. And Brown and Jaramillo said that when they got to

1 this area they couldn't find a bicycle trail or a trailhead
2 that went off, and so they didn't look for or find any
3 bicycle tracks; isn't that right?

4 A. From my recollection of what they told me, that
5 would be correct.

6 Q. And when was the next time that detectives went
7 out to this location, again, trying to find tire tracks or
8 other physical evidence where my client said he was riding?

9 A. I don't recall off the top of my head, sir.

10 Q. How about never? Do you think the answer is
11 never? The police never went back and looked for tire-track
12 evidence after that first morning?

13 A. You would have to ask the detectives that were
14 investigating the crime at that time.

15 Q. And in fact, there is, right at this little house
16 here, at the end of this little spur, what's called a "single
17 track."

18 Do you know what a single-track trail is
19 as opposed to a double-track trail?

20 A. I don't.

21 Q. If I told you that mountain bikers will say a
22 track is a single track if it is just wide enough -- a couple
23 feet wide -- for one tire to go down -- a bike -- as opposed
24 to a double track that would be like a Jeep road, where there
25 would be tracks several feet apart, indicating a car or a

1 Jeep or something like this.

2 A. It's a wider track than a single track.

3 Q. Right. Yeah. That's an easier way to put it.

4 There is a single-track trail that goes
5 off from the end of the spur on Love Lane that connects right
6 up into what the forest service calls Trail 309. And it's
7 right there on the ground, isn't it? It's right there by
8 those dog kennels.

9 Do you know what I am talking about?

10 A. I am not familiar with the dog kennels, sir.

11 Q. Did you read a report from Huante and Jaramillo
12 when they're talking about dogs barking?

13 A. I did read a report. The report is quite
14 voluminous, and I can't recall exactly that, but I read
15 through the entire report.

16 Q. Days and days later, Detective Brown, on foot,
17 started all the way up here -- pointing up to a place that
18 doesn't exist -- at the Williamson Valley trailhead, and
19 hiked on foot down on to Exhibit 64, up to this gate here,
20 and then tried to find the route that my client said he had
21 been on his bicycle.

22 Do you remember that report?

23 A. Yes.

24 Q. And in fact, not having been there and being
25 familiar with it, Detective Brown said that he ran into a

1 hiker and had to be shown where the Trail 347 spurred off,
2 and that he hiked back up Trail 309, up -- as shown on
3 Exhibit 64.

4 Do you remember him saying that?

5 A. Again, I don't recall the exact numbers. I do
6 remember Detective Brown telling me that he hiked the trail.

7 Q. At the time that Detective Brown was out there on
8 foot, there is no chance, is there, that any bicycle tire
9 tracks associated with my client's bike would still have been
10 there, because we had two weeks of pretty hard monsoon rains;
11 isn't that right?

12 A. That would seem to be a reasonable assumption.

13 Q. So to summarize, the only effort that you know of
14 to corroborate what my client said he was doing that night
15 was this visit by Jaramillo and Huante out to the Love Lane
16 area. That's the only effort to actually try and find
17 physical evidence to corroborate what my client said;
18 correct?

19 A. I am not sure which detectives went out there.

20 Q. The detectives went at about 4:30 in the morning,
21 before the sun came up the next morning, out to this area,
22 looking for the trail where my client said it was; correct?

23 A. I wasn't there at the time, so you are better off
24 asking these questions to the detectives that were there at
25 the time.

1 Q. Okay. Now, let's take a look, if you could, at
2 Exhibit 12.

3 Do you still have Exhibit 12 there?

4 A. If you could refresh.

5 Q. It's the photograph of the tire tracks in the
6 dirt.

7 A. Yes, sir.

8 Q. You know that photographs, including that one and
9 other photographs of these tire tracks, were sent to the DPS
10 crime lab for evaluation in this case, don't you?

11 A. Yes. Photographs were sent.

12 Q. Now, you testified before the Grand Jury -- page
13 reference -- you testified on Page 18 of the Grand Jury
14 transcript. Can you find that reference? Let me know when
15 you are there.

16 A. I am there.

17 Q. Page 18, lines 14 through 16: "Those bike tracks
18 were consistent with tread patterns found on Mr. Democker's
19 bike, including what appeared to be a flat fire."

20 That is what you told the Grand Jury;
21 right?

22 A. Yes, sir.

23 Q. And obviously, as you said with practically
24 everything else we've been talking about, this was based on
25 what other police officers had told you and shown you;

1 correct?

2 A. Including the DPS report.

3 Q. Now the DPS report --

4 If I could just have a moment, your
5 Honor. I thought I had it right here.

6 The DPS report, which was sent to the
7 sheriff's office on September 16, or roughly a month and a
8 half before you testified at the Grand Jury, said that "Due
9 to the limited clarity and proper scale of images" -- meaning
10 the photographs -- "a more conclusive association was not
11 made."

12 That is what the DPS report said; isn't
13 that right?

14 A. I've got the Bates stamps here. I am getting to
15 that, if that's all right.

16 Is that 363.

17 Q. It's Bates 311.

18 A. 311. Can I read the entire results
19 interpretations from the DPS lab?

20 Q. Yeah. What the criminalist, Mr. Hoang, H-o-a-n-g,
21 said at 311 Bates was that similar tire-tread patterns exist
22 between the tire tracks depicted in images -- and you have
23 one, two, three, four images that had been sent -- and the
24 front and rear bicycle tires, which he had been sent pictures
25 of -- or actually, probably been sent the items 400B and

1 400C.

2 He says, "However, due to the limited
3 clarity and proper scale of the images, a more conclusive
4 association is not made."

5 So he didn't say "consistent," did he,
6 Detective? He said similar. That's what the criminalist
7 said; correct?

8 A. Yes.

9 Q. Now, the criminalist also said, essentially,
10 because of the quality of the photographs -- or the lack of
11 the quality of the photographs -- that's all he could say.

12 A. Right. He said "a more conclusive association was
13 not made."

14 Q. And those tire tracks are now gone forever except
15 to the extent that they are captured in photographs taken by
16 the police; correct?

17 A. That is often the case with transient evidence.

18 Q. Detective Kennedy wrote a report where said she
19 went back out to look for tracks, and that it had rained
20 again by the time she went back out, and the cattle had been
21 in the area and obliterated the tracks that she had tried to
22 locate and identify.

23 Have you seen that report?

24 A. Yes, I have seen other reports there.

25 Q. Okay. So back to my question: It's true, isn't

1 it, that except for the photographs -- which the police took,
2 one of which is in evidence so far today -- there is no other
3 recorded record of those tracks available? There is no
4 plaster cast; correct?

5 A. That's correct.

6 Q. No tent was put over that evidence to preserve it
7 and photograph it more carefully; correct?

8 A. Well, I am not sure what your statement regarding
9 more carefully -- photographing more carefully. I believe
10 they used scales, and you would need to speak to the evidence
11 people on how they exactly went about photographing.

12 Q. But when you testified to the Grand Jury on
13 October 31st, at Page 18, lines 14 through 16, that the bike
14 tire tracks were consistent with tread patterns, you had in
15 your possession, available to you, a report of a criminalist
16 that said they were simply similar, that they couldn't make a
17 more conclusive association besides saying they are similar.

18 A. I stand by my testimony. Similar and consistent
19 are related words.

20 Q. You understand you were addressing a group of lay
21 people, members of the Grand Jury, when you gave that
22 testimony?

23 A. "Similar and consistent" are not -- is not
24 law-enforcement terminology. That is common grammar.

25 Q. Okay. You didn't tell the Grand Jury that a

1 criminalist has said that because of the clarity and lack of
2 scale in the photographs, that that criminalist could not
3 give a more conclusive association besides saying they are
4 similar.

5 A. Right. A more conclusive association was not
6 made. You could not conclude for certain, based on solely
7 the photographs, that those tread patterns matched
8 Mr. Democker's tires.

9 Q. Okay. Were you involved in assisting Detective
10 Brown in drafting the affidavit in support of the search
11 warrant executed at the time my client was arrested in
12 October of this year?

13 A. You will have to give me a moment. I believe I
14 suggested that maybe they add something, but I cannot recall
15 exactly what it was. But I did not have a whole lot of
16 involvement with the drafting of that search warrant.

17 Q. You didn't have that kind of involvement. You
18 didn't even assist in the preparation of search warrants?

19 A. Sometimes we don't. I was provided -- my
20 involvement with this case is basically to organize it, get
21 an overview of it, delegate.

22 I didn't say I didn't assist with that.
23 I didn't assist in the drafting of it. I looked it over, and
24 it appeared all right to me.

25 A sergeant also looks over it, as does

1 the County attorney's office.

2 MR. SEARS: If I may have just a moment, your
3 Honor. I have a copy of a document. I am missing one page.

4 While we're looking for that, if I could
5 have the clerk -- if I could approach the witness for a
6 moment, your Honor.

7 THE COURT: Of course.

8 MR. SEARS: Thank you.

9 Q. I have now had marked as 67 for identification a
10 copy of the DPS report that we have been talking about and
11 reading from.

12 Do you recognize that as the report from
13 the DPS criminalist regarding the analysis of the photographs
14 of the bike tracks?

15 A. Yes, sir.

16 MR. SEARS: I would move 67.

17 MR. AINLEY: No objection.

18 THE COURT: 67 is admitted.

19 MR. SEARS: I will come back to that matter,
20 your Honor. We are having difficulty locating this missing
21 page.

22 Q. Let's talk about physical evidence connected to
23 this offense.

24 The police, beginning on the morning of
25 July 3rd, pursuant to search warrants, began to process the

1 Bridle Path scene carefully for physical evidence; isn't that
2 right?

3 A. That's my understanding, sir.

4 Q. And you have seen, I am sure, scientific
5 examination reports -- requests for scientific examination
6 reports for DNA and blood evidence taken from the scene;
7 correct?

8 A. Yes, sir.

9 Q. Now, let's talk about the scene, generally. Judge
10 Lindberg, of course hasn't been there.

11 This is a residence, as we saw in
12 Exhibit 66, that is at the end of a road here. There is open
13 land behind it and to the north of it, and there are houses
14 that don't show up on Exhibit 66.

15 Can you describe the property at Bridle
16 Path to the judge, how it is laid out?

17 A. There is a -- there is a main house, and then
18 there is a guest house associated with it. There is some
19 horse -- some horse stalls, I believe, or horse corrals. And
20 I am not sure how large the parcel is, to be honest with you,
21 but it's a fairly decent size parcel of property.

22 Q. And the house is sort of a Santa Fe style stucco
23 with metal roof; correct?

24 A. That seems correct, yes, sir.

25 Q. And the guest house is made out of the same

1 materials; is that right?

2 A. I was under the impression that the guest house
3 was a straw bale house.

4 Q. It looks pretty similar. They are designed to be
5 compatible with each other; is that right?

6 A. In appearance, yes.

7 Q. And about how far from the guest house is the main
8 house?

9 A. Again, I wasn't at the scene. Had I been, I would
10 have measured it, things of that nature. But I would say
11 within a couple hundred feet, maybe, roughly again.

12 Q. And on the night in question, a man named
13 Jim Knapp, K-n-a-p-p, became known to law enforcement; isn't
14 that right?

15 A. Yes, sir.

16 Q. Mr. Knapp, as it turns out, was living in this
17 guest house on the night of the events that brought us here
18 and prior to that for some time; is that right?

19 A. Yes, sir.

20 Q. Mr. Knapp was interviewed a number of times by the
21 police; is that right?

22 A. Yes.

23 Q. Mr. Knapp apparently drove up in his truck not
24 long after Miss Kennedy's body was discovered; isn't that
25 right?

1 A. Yes.

2 Q. And Mr. Knapp said that he had not been there for
3 some time, that he had been in another part of town
4 visiting -- at his ex-wife's home, visiting with one of his
5 young children; correct?

6 A. Yes, sir.

7 Q. When did the police first contact Mr. Knapp's
8 ex-wife or the children to try and verify his alibi?

9 A. I can't give you a definitive date, sir. I know
10 that they did contact his ex at some point.

11 Q. Not that night; correct?

12 A. No, I don't believe so.

13 Q. Not the next day; correct?

14 A. No, I don't believe so.

15 Q. Now, the police worked on the crime scene
16 throughout the day and night at Bridle Path, the remainder of
17 July 2nd and most of July 3rd, processing the scene; correct?

18 A. To my understanding, yes, sir.

19 Q. Then they cleared the scene for a few days; isn't
20 that right? This was a Wednesday night and a Thursday we're
21 talking about, July 2 and July 3; correct?

22 A. The evening of July 2nd and -- yes, sir.

23 Q. The police left the scene, didn't secure it, and
24 Mr. Knapp came back onto the property, didn't he?

25 A. That is my understanding.

1 Q. And Mr. Knapp had access to the main house and, in
2 fact, told police that he was in and out of the main house on
3 July 4th and July 5th, until the police came back; isn't that
4 right?

5 A. The exact dates, I don't recall. I can tell you
6 that from what I was told, he had access to the house.
7 Detective Brown, I am sure, can elaborate further on that.

8 Q. But the police were gone from the scene. They
9 left the scene, and Mr. Knapp essentially had control of it
10 at that point; isn't that right?

11 A. Yes. Well, I wouldn't say "control," but
12 Mr. Knapp was back in the house.

13 Q. He was the only person, to your knowledge, on the
14 premises on July 4th and July 5th, until the police came back
15 the third time.

16 A. Again, I am not comfortable with answering
17 questions regarding dates, but I do know that Mr. Knapp was
18 in the house.

19 Q. Let's talk about this head cover story that you
20 told Mr. Ainley about and how this relates. The theory of
21 the case, according to the police and even in the indictment
22 returned by the Grand Jury, is that my client on July 2nd
23 wasn't riding his bike on the other side of Williamson Valley
24 Road but, apparently, rode his bike down Glenshandra, through
25 the fence, over the gate somehow, to the spot where you said

1 the tire tracks stopped, went down some trails -- no
2 footprints associated with the shoes found -- but he went
3 down, got into the house -- went over the fence in the back
4 and got into the house.

5 Isn't that, essentially, your theory?

6 A. I missed what you said. I thought you said
7 something about there being no shoe prints associated.

8 Q. You haven't found any shoe prints at all anywhere
9 on the Bridle Path property in the 10,000 acres of open land
10 at the end of Glenshandra. You have not found a single shoe
11 print that you can say is conclusively associated with my
12 client, that matches any shoe of his that you seized or
13 examined; correct?

14 A. Yes. No shoes that we found, that's correct.

15 Q. But you say, nonetheless, he comes down -- comes
16 through the back of the property, over the fence, and gets
17 into the house while Miss Kennedy is out for an evening run
18 on this open land; is that right?

19 A. That's the theory.

20 Q. Okay. And at some point, either as he is riding
21 down Glenshandra or as he gets into the house, he has a
22 particular golf club that is associated with that head cover;
23 is that right?

24 A. We believe that golf club was at the house
25 already.

1 Q. Where in the house?

2 A. We are not certain. We know that he originally
3 had put the golf club into the garage sometime after
4 June 21st.

5 Q. Which garage? There's two garages, aren't there?

6 A. Detective Brown would have to answer that
7 question.

8 I believe it would have been the garage.
9 If there's two garages, one is associated with the guest
10 house, then certainly it would have been the garage
11 associated with the main house.

12 I believe Detective Brown needs to answer
13 that question -- or one of the detectives that was out there.

14 Q. Did anyone -- anyone -- Jim Knapp, the Democker
15 daughters -- anybody ever say that they saw the golf club
16 that you think was involved in this case at Bridle Path?

17 A. I would have to look at my testimony regarding my
18 interview with Rene Gerard. I believe she did tell us that
19 Mr. Democker dropped the golf club off at the garage. I
20 don't recall if she said she was present or not.

21 Q. She wasn't there, was she? She didn't say she was
22 there and saw Mr. Democker drop the golf club. She said
23 Mr. Democker told her that; isn't that right?

24 A. Again, I would have to refer to my report.

25 Q. If you can find it, please go ahead.

1 A. It is Supplement 61.

2 Q. Okay. Read what you need to, if it refreshes your
3 recollection, and let me know when you are done, please.

4 A. No, sir. I don't have any indication that
5 Rene Gerard was present when Mr. Democker dropped the golf
6 club off.

7 Q. In fact, what Rene Gerard told you was that
8 Mr. Democker had said that he had gone out to the property
9 and that Miss Kennedy was not there, but Mr. Knapp was there.
10 Mr. Knapp answered the phone, because the phone in the main
11 house rang in the guest house. That Mr. Knapp opened the
12 garage door to the guest house, put some towels on the floor.
13 That Mr. Democker left some items there.

14 That's what she told you, isn't it?

15 A. I'm sorry, I lost it. I can read it.

16 I don't see anything about towels, but
17 what it does say is "Steve" -- this is a quote from the
18 report.

19 Q. I just want you to read and refresh your
20 recollection.

21 A. Oh, I'm sorry.

22 Q. Read from the report. If it doesn't refresh your
23 recollection and you have to read it, tell me that.

24 A. Okay. Reference the indication that it was to the
25 guest house, I don't recall that.

1 Q. Okay. And in fact, the police had information
2 early on in this case that Miss Kennedy and Mr. Knapp were
3 planning a large joint yard sale between the two of them, at
4 some point down the road, that never took place because she
5 was killed; correct?

6 A. I didn't hear about a joint one. That may be the
7 case.

8 I heard that Carol Kennedy was planning
9 on having a garage sale and that Mr. Democker was donating
10 the golf club.

11 Q. Mr. Knapp told the police that, Sharlot Democker
12 and Katie Democker told the police that, that they knew their
13 mother was talking about a yard sale.

14 A. Correct.

15 Q. Let me show you what I've had marked as
16 Exhibits 58 and 57 for identification.

17 Do you have any idea what is in those
18 photographs?

19 A. No, sir.

20 Q. If I told you those were photographs taken by the
21 police of the garage in the guest house where Mr. Knapp
22 lived, after these events, have you ever seen those
23 photographs before?

24 A. I very well may have. There are a whole lot of
25 photographs associated with this case, but I do not recall

1 specifically seeing these.

2 Q. The police had a search warrant on July 3rd, 2008,
3 to search all of the property at Bridle Path, including the
4 guest house; isn't that right?

5 A. If it's in the search warrant, I would say it is
6 probably correct.

7 You said July 2nd, correct?

8 Q. July 3rd.

9 A. July 3rd. Yes, sir.

10 Q. The day after this happened. The search warrants
11 were obtained as the sun was coming up on July 3rd; correct?

12 A. Yes, sir.

13 Q. Bridle Path and my client's residence at Alpine
14 Meadow, those warrants were obtained by early morning, by fax
15 to Judge Markham; correct?

16 A. And, I believe, the DPS officer.

17 Q. Right. It's true, isn't it, that the police never
18 searched the guest house, not once?

19 A. You need to ask Detective Brown about that.

20 Q. As the case agent, have you seen any report,
21 search warrant return, or any other information that
22 indicates that the police searched the guest house on the
23 property where this homicide took place?

24 A. Very well may have, sir. I don't recall.

25 Q. Can you think of one item of evidence, a tangible,

1 physical evidence that you believe was seized from the guest
2 house pursuant to search warrant?

3 A. Not that I was made aware of.

4 Q. It's true, isn't it, Deputy, that these
5 pictures -- 57 and 58 for identification -- show property of
6 the kind and of the nature consistent with a yard sale --
7 clothing, furniture, books, a toaster oven, a lamp -- the
8 kinds of things that people would assemble if they were going
9 to have a Prescott, Arizona yard sale?

10 A. What's your question?

11 Q. Isn't it true that the items depicted in 57 and 58
12 for identification are the kinds of items that you would
13 expect to see people accumulating in anticipation of having a
14 yard sale? That is what it looks like.

15 A. They could be consistent with that.

16 Q. Sure. It's a pretty cluttered scene in 57 and 58
17 for identification.

18 A. Yeah, there's a lot of stuff there.

19 Q. Okay. You see any golf clubs?

20 A. I don't see any golf clubs.

21 Q. Pieces of rebar, carpenter's framing hammers,
22 croquet mallets -- any other object with a shaft and a head
23 on it in this --

24 A. Can I see those again?

25 Q. Please.

1 MR. SEARS: By the way, I move 57 and 58.

2 MR. AINLEY: The officer has not identified
3 these as being from the garage. Detective Brown may be able
4 to do that, but I object at this point in time.

5 THE COURT: I don't think the necessary
6 foundation has been laid.

7 MR. SEARS: I will save them for Detective
8 Brown.

9 THE COURT: Sustain the objection.

10 THE WITNESS: The items that you are
11 describing I do not see in the photographs here.

12 BY MR. SEARS:

13 Q. If you had been the case agent on July 3rd, 2008,
14 certainly you would have instructed detectives and evidence
15 techs to search this garage area in the guest house, wouldn't
16 you?

17 A. I can't make assumptions of what I would or
18 wouldn't do. I was the case agent at a particular point in
19 time.

20 Q. As we sit here today -- as we sit here today,
21 five-and-a-half months down the road, the State of Arizona
22 and Yavapai County sheriff's office does not have in its
23 possession any items which it believes is the murder weapon
24 in this case; isn't that correct?

25 A. That's correct.

1 Q. And yet within hours after this body was
2 discovered, and with a search warrant that authorized the
3 police to search every square inch of that property looking
4 for a murder weapon, can you conceive of a reason -- can you
5 conceive of a single reason why the guest house was not
6 searched?

7 A. I don't know if it was or was not searched.

8 Q. Isn't it true, Detective, that as Detective Brown
9 said in his affidavit in support of the search warrants that
10 were issued on the day that my client was arrested, "At this
11 time, we have not been able to locate the murder weapon, the
12 shoes that created the tracks, and specific evidence tying
13 Democker" -- my client -- "directly to the house."

14 That's what he said, and that's still
15 true today, isn't it?

16 A. I'm sorry. If you could repeat that -- if you
17 could tell me what you are referring to.

18 Q. I am talking about a statement at Bates 1726, if
19 you have that, which is an affidavit of Detective Brown --
20 who is out in the hall -- in support of a search warrant, one
21 of a series of search warrants that were executed at the time
22 my client was arrested.

23 A. 1726?

24 Q. Yes, sir.

25 A. I don't have that. If you could just read it to

1 me again, please.

2 Q. If you give me a minute.

3 A. Whatever you just read, sir. You just read
4 something to me.

5 Q. I am reading from a memorandum that I filed with
6 the court. Let's go to the original source of that. This is
7 an important case, Detective.

8 A. All right.

9 MR. SEARS: May I approach the witness, your
10 Honor?

11 THE COURT: Yes.

12 MR. SEARS: Thank you.

13 Q. Let me show you, from my set of discovery in this
14 case, Bates Page 1726, which is a page from a search warrant
15 here. If you want to look at the pages before and after,
16 feel free. I am calling your attention to a paragraph in the
17 middle of Bates 1726.

18 A. Okay. Would this be the first page of that search
19 warrant?

20 Q. Go back as far as you want. This is the order.
21 You can see the Bates numbers are consecutive, here. I am
22 looking up here at 1726. Feel free to look at whatever you
23 want to. It should all be there in order, at least in the
24 order it was given to us.

25 A. And when do you say the search warrant was

1 written?

2 Q. Do you see a date on it? This could be the
3 September 4th one.

4 Let's talk about September 4th. The
5 first time he says this, "We have not been able to locate the
6 murder weapon, the shoes, and specific evidence," he says it
7 on September 4th; correct?

8 A. That is -- well, that's what Detective Brown
9 wrote.

10 Q. Okay. Yes?

11 A. That --

12 Q. If you look in the same book at 1762 -- maybe
13 earlier.

14 On Page 1761 -- my mistake, -- very
15 similar sentence written by Detective Brown which he signs
16 under oath: "At this time, we have not been able to locate
17 the murder weapon, the shoes that created the shoe tracks or
18 any physical evidence tying Steven Democker directly to the
19 house at 7485 Bridle Path from the night of the murder."

20 That is the same thing he said back on
21 September 4th; isn't that right?

22 A. That appears correct.

23 THE COURT: I don't have the date, if you
24 might help me out. 1761?

25 MR. SEARS: Yes, sir.

1 Q. October 22nd, 2008; isn't that right, Detective?
2 That's the date of this second search warrant affidavit that
3 we are looking at.

4 A. The date it was signed. Yes, sir, October 22nd.

5 Q. That's the day before my client was arrested;
6 correct?

7 A. Yes, sir.

8 Q. The search warrant was executed the next day, the
9 23rd; correct?

10 A. Yes, sir.

11 Q. So, that was true, again, that fact that you
12 didn't have those things. You didn't have a murder weapon.
13 You didn't have shoes that matched the prints, and you didn't
14 have any -- let's be real careful with the quote here --
15 "physical evidence tying Steven Democker directly to the
16 house from the night of the murder."

17 That was again true the day before you
18 arrested my client and charged him with capital murder; isn't
19 that right?

20 A. That is Detective Brown's terminology.

21 Q. Is it true?

22 A. As far as any physical evidence tying Mr. Democker
23 directly to the scene, I would think that the tire tracks,
24 which were similar or consistent, do tie him to the scene.

25 Q. So you are saying that Detective Brown's sworn

1 statement two times, September 4th and October 22nd of this
2 year, support of an application for search warrant, are not
3 accurate?

4 A. I would say that Detective Brown did not
5 intentionally mislead anything. You would need to ask him
6 directly what he meant by "physical evidence."

7 Q. Okay. Well, let's be clear, here.

8 What do you mean by "physical evidence"
9 that you think ties Mr. Democker to the house of 7485 Bridle
10 Path on the night of the murder?

11 A. Well, I would consider the tire tracks a piece of
12 evidence. That is not circumstantial. There is physical
13 evidence there. And I do believe that those tracks being
14 similar or consistent with Mr. Democker's bike do play some
15 role in tying him to that scene.

16 Q. The same tire tracks that you told me earlier this
17 morning, you can't tell when they were made; correct, the
18 same tire tracks?

19 A. Yes, sir. Going back -- based on the information
20 from the other detectives because, as I said, I was not at
21 the scene.

22 Q. So you have no evidence here to give Judge
23 Lindberg when the tire tracks that you say are physical
24 evidence linking my client to the house were actually made;
25 correct?

1 A. No, sir. The detectives that were at the scene on
2 that date would have to testify to that.

3 Q. Now, the detectives said that the tire tracks that
4 they think are associated with my client's bike ended
5 abruptly near a bush about 300 yards from the back of the
6 house; is that right?

7 A. I would have to refer to the report, sir. I don't
8 recall the exact numbers right now.

9 Q. This is important evidence, isn't it?

10 A. I understand, sir. Numbers right now -- I have an
11 overview of the case. Whether there were 300 yards or
12 200 yards, I cannot -- you asked me a direct question, and
13 you said 300.

14 Q. Yes. That is what the police reports that I have
15 seen say. Presumably, the same reports that you looked at;
16 isn't that right?

17 A. Yes. We probably looked at the same reports.

18 I am not comfortable with saying that
19 it's 300 yards until I see the report.

20 Q. Well, when you went out with Detective Huante and
21 he was showing you months later where these tracks were,
22 where did he show you the tracks ended?

23 A. We are talking about the bike tracks; correct?

24 Q. Yes, sir.

25 A. Right at the end of the -- as I pointed before, at

1 the end of Glenshandra there.

2 Q. Here is the end of Glenshandra. I'm pointing with
3 a laser.

4 A. Yes, sir. Right around in this area.

5 Q. Do you have some sense how far that is, by any
6 measurement, from the back of the Bridle Path?

7 A. Yeah, I would not argue that it's not 300 yards.

8 Q. How long were the bicycle tracks themselves?

9 A. I don't recall that, sir. I'd have to refer to
10 the report.

11 Q. And to be clear, these are the same bicycle tracks
12 that the criminalist, in the exhibit that we have in evidence
13 today, said that he couldn't conclusively associate with my
14 client's bike because of the clarity and lack of scale in the
15 photographs, but they were similar.

16 A. He said a more conclusive association could not be
17 made, but they were similar.

18 Q. That's right. That's right.

19 Now, what other physical evidence besides
20 these tracks do you believe ties my client to Bridle Path on
21 the night of the murder?

22 A. None that I am aware of.

23 Q. The police collected and sent off for evaluations
24 many, many times, with respect to some of the items, well
25 over a hundred items of physical evidence -- blood, suspected

1 blood, DNA, fingerprint evidence; isn't that right?

2 A. Correct.

3 Q. And it is true, isn't it, Detective, that there is
4 not a single, single report from any lab, including the
5 private lab that the sheriff's office used from Salt Lake
6 City, the Sorenson Lab, that ties my client to the crime
7 scene on the night of the murder? There is no DNA evidence,
8 there is no fingerprint evidence, there was no blood evidence
9 that ties my client to this evidence; isn't that true?

10 A. Detective Brown can testify to the DNA evidence
11 greater than I can, but on the surface that appears to be the
12 case.

13 Q. Certainly by now, nearly six months out, if there
14 was a piece of blood evidence or DNA evidence that you
15 believe in any way tied my client to this case, we would be
16 hearing about it, wouldn't we?

17 A. I believe so. Yes, sir.

18 Q. And in addition to the evidence from the crime
19 scene, on that same day evidence was collected from my
20 client -- blood, a buccal swab from the inside of his mouth
21 for DNA purposes, and fingerprints; correct?

22 A. Yes, sir. Buccal swab.

23 Q. Buccal. Buccal. There is a song in that, I am
24 sure.

25 And my client produced that evidence on

1 the 3rd of July of this year; isn't that right?

2 A. Yes, sir.

3 Q. And then on that same day, the police went to my
4 client's residence, took his bicycle, his car, shoes, took
5 pictures of shoes, took the clothes he was wearing, took the
6 clothes out of the laundry where he said he had washed them,
7 took swabs from the drains in the washer and the sinks --
8 searched everywhere for evidence of blood from the victim at
9 my client's residence; isn't that right?

10 A. Yes, sir.

11 Q. And it is true, isn't it, that despite all of
12 those efforts, as we sit here today, you are not aware of a
13 single piece of evidence that a criminalist has said is
14 associated with Carol Kennedy's blood or DNA being found on
15 my client, on his clothes, in his car, or at his home;
16 correct?

17 A. That is correct, sir.

18 Q. No such evidence exists, to your knowledge;
19 correct?

20 A. None to my knowledge.

21 Q. Now, maybe I will save this for Detective Brown.

22 Are you telling us that Detective Brown
23 is the person that is going to answer questions about the DNA
24 evidence?

25 A. Yes, sir.

1 Q. Then I won't burden you with questions about that.

2 You, of course, weren't present at the
3 autopsy that was conducted.

4 A. No, sir.

5 Q. Have you interviewed Dr. King since this?

6 A. I believe I did.

7 Q. I'm sorry?

8 A. I believe I did.

9 Q. Okay. When was that?

10 A. It's probably in my report, and I can refer to
11 that.

12 Q. Do you have a report that you could look at that
13 could tell me when it was that you interviewed Dr. King
14 yourself?

15 A. I may, sir.

16 Q. It is very important, because I --

17 A. No, I understand.

18 Q. -- I've not seen such a report.

19 A. I did have an autopsy report, I did, based on
20 Dr. King's autopsy report. I am not sure if I spoke to
21 Dr. King directly or not. I can't recall.

22 Q. If you did, you would have written a departmental
23 report, wouldn't you?

24 A. Yes, that's what I would do.

25 Q. And the absence of such a report indicates that

1 you didn't talk to him directly; would that be fair to say?

2 A. Can I refer to the autopsy report?

3 Q. Please.

4 A. Supplement 22. I don't have any information that
5 I spoke directly to Dr. King on this case in the report.

6 Q. The police theory and the State's theory in this
7 case is tied to a very specific weapon. In fact, the
8 indictment in this case refers to a golf club. And so there
9 is no mistake about it, your belief is that the golf club
10 that was used to kill Carol Kennedy was the golf club
11 associated with the head cover that was eventually recovered
12 by my office the day Steven was arrested; correct?

13 A. That is a reasonable assumption, I believe.
14 Correct. Yes.

15 Q. Are you saying that it could be some other golf
16 club?

17 A. There are consistencies with that type of golf
18 club with her injuries, and we believe that -- maybe I
19 misunderstood your question, but we do believe that golf-head
20 cover is associated with the murder weapon.

21 Q. Again, would Detective Brown be the person better
22 equipped today to testify in detail about the golf club part
23 of this case?

24 A. Well, I may be able to answer certain questions
25 regarding that. I know that I did not attend the autopsy nor

1 did I go to the consultation that they had with
2 Dr. Fulginiti. I did talk with Dr. Fulginiti after the fact.

3 Q. Now, let's review here. You don't have a single
4 witness that has come forward and said that they saw any golf
5 club at Carol Kennedy's house, much less the left-handed
6 Callaway steel head 3 Big Bertha Fairway club that you claim
7 was involved in this case; isn't that true?

8 A. The answer to the latter part of your question is
9 yes. The answer to the former, I would have to defer to
10 Detective Brown.

11 I don't recall if anybody had stated that
12 they saw a golf club there. Mr. Knapp -- and I am trying to
13 recollect while I am talking -- Mr. Knapp -- according to
14 Detective Brown, Mr. Knapp did not see Mr. Democker put a
15 golf club into the garage.

16 Q. In fact, Mr. Knapp only just opened the garage
17 door and didn't have any direct communication with
18 Mr. Democker on the 21st of June; isn't that right?

19 A. That's our understanding, sir.

20 Q. Mr. Knapp is not claiming that he got out and
21 spoke with Mr. Democker or took something from him; correct?

22 A. Well directly, in answer to your question, sir,
23 Mr. Knapp, based on what Detective Brown told me in the
24 reports, had no information that Mr. Democker had placed a
25 golf club or saw a golf club being placed into the garage.

1 Q. In fact, Detective Brown -- is it possible that
2 you are confusing two different times that Mr. Democker had
3 told others that he had been out to the residence -- one time
4 to deliver some artwork, for which there is an e-mail
5 documentation, the June 21st trip, and another time on a
6 different date to deliver this golf club; is that possible?

7 A. I don't believe so.

8 Q. Do you have any witness that has told the
9 police -- any police officer in this case, any detective or
10 any deputy -- that they had specific information about when,
11 where, and under what circumstances this golf club came into
12 Ms. Kennedy's possession?

13 A. Aside from the statement by Rene Gerard that
14 Mr. Democker had told her -- that's not right. No, sir. I
15 believe Katie had told us that.

16 Q. This is Mr. Democker's daughter?

17 A. Yes. I'm sorry. Katie Democker.

18 I believe she told Detective Brown in her
19 interview -- again, this would be a question for Detective
20 Brown -- that her dad had donated a golf club to the garage
21 sale, but she was not aware of who brought it over to the
22 house.

23 Q. And most particularly, none of those people -- not
24 Rene Gerard or Katie Democker or anyone else ever said that
25 they even saw the golf club out at Bridle Path before the

1 murder?

2 A. That would be correct, sir, to my knowledge.

3 Q. Now, would Detective Brown be the person to talk
4 with today about the opinions of Dr. Fulginiti, the forensic
5 anthropologist, and Dr. King, the medical examiner?

6 A. I was not at either one of those procedures, so I
7 think he would probably have more in-depth knowledge. If you
8 have specific questions, I may be able to answer them.

9 Q. For example, Dr. Fulginiti filed a two-page letter
10 dated July 28 of this year, sent to Dave Rhodes, Bates 548
11 and 549.

12 Do you have that letter?

13 A. Yes, sir.

14 Q. Okay. And on the second page, Bates 549,
15 Dr. Fulginiti talks about a visit where Doug Brown, Dave
16 Rhodes, Louis Huante, and Alex Jaramillo all come down with a
17 golf club and visited her; correct?

18 A. Yes, sir.

19 Q. In fact, what they have is a Callaway Big Bertha
20 steel head 3, No. 7 Fairway wood, which Detective Brown
21 obtained; correct?

22 A. I believe Detective Sergeant Dan Winslow obtained
23 that.

24 Q. And from a golf shop, because they thought that
25 was the club that would be associated with the head cover;

1 correct?

2 A. That would be the golf club associated with the
3 golf head.

4 Q. But it is not the murder weapon. It is just
5 something to simulate what you think the murder weapon was;
6 correct?

7 A. Yeah.

8 Q. What Dr. Fulginiti said is that she examined the
9 golf club and she compared the golf club with the injuries
10 exhibited on the skull that she had been asked to look at.
11 And what she says is that club cannot be ruled out as the
12 cause of the injury. That's all she says; right?

13 A. Correct.

14 Q. And then at Bates 1939, which is a report from
15 Detective Brown -- do you have that reference?

16 THE COURT: Bates 931?

17 MR. SEARS: 1939, your Honor.

18 THE COURT: 1939. Thank you.

19 THE WITNESS: 1939.

20 BY MR. SEARS:

21 Q. Yes, sir.

22 A. I do not have it. I do. I'm sorry.

23 Q. And I direct your attention to the second
24 paragraph from the top, the last two sentences.

25 Dr. Fulginiti suggested that "other golf clubs and objects be

1 tested to show the differences in impact damage, but the
2 left-hand club contributed consistently with the trauma."
3 That is what Detective Brown wrote; correct?

4 A. Correct.

5 Q. Tell me what additional tests were made with what
6 other objects consistent with the suggestion of
7 Dr. Fulginiti.

8 A. We are still waiting for the blood-spatter expert
9 report. Once we receive that, we will be in further
10 consultation with Dr. Fulginiti. And at that time, we will
11 discuss with her and the blood-spatter expert the feasibility
12 of additional testing.

13 Q. Five months ago, nearly, Dr. Fulginiti
14 specifically said test other golf clubs and other objects,
15 and you are saying you are still waiting for further work to
16 done in this case before you even decide whether you are
17 going to do that testing?

18 A. The blood spatter -- when I got this case, I have
19 been on him. He is getting the report done, so we are still
20 waiting for that.

21 Absent that report, to have testing done
22 with Dr. Fulginiti present, would not give us a full story.
23 We'd like the blood-splatter expert and Dr. Fulginiti, and
24 then at that time we will make a determination as to the
25 feasibility of such testing.

1 Q. Detective, my client has been sitting in jail for
2 two months today, and you are telling me that your
3 blood-spatter expert --

4 MR. AINLEY: Objection. How long the
5 defendant has been sitting in jail is not relevant to the
6 testing.

7 THE COURT: Nor is the question being repeated
8 of any help to me in determining that. So it started out
9 phrased wrong. I will sustain the objection at this point.

10 I will call a recess until 1:30.

11 MR. SEARS: Thank you, your Honor.

12 (Whereupon, a recess was taken at 12:05 p.m.

13 to resume at 1:30 p.m. of the same day.)
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DECEMBER 23, 2008
3:15 P.M.

SIMPSON HEARING

APPEARANCES:

FOR THE STATE, MR. MARK AINLEY.
FOR THE DEFENDANT, MR. JOHN SEARS.

THE COURT: I apologize to all concerned who are interested in the Democker case for the delay, but let's start again.

The record can reflect the presence of Mr. Democker, his counsel, the prosecutor, and the Detective is still on the stand.

And you may proceed, Mr. Sears.

MR. SEARS: Just a bit more, your Honor.

Thank you.

CROSS-EXAMINATION CONTINUED

BY MR. SEARS:

Q. Detective, going back to some matters that we touched on briefly this morning when you were on the stand, you were talking about this continuing investigation that is being conducted, apparently, regarding financial matters involving my client.

Do you recall your testimony on those points?

A. Yes, sir.

Q. And you mentioned, if I understood you correctly,

1 that one of the aspects of my client's finances that you were
2 looking into or having other people look into was a problem
3 or some issue involving his 2007 federal income tax return;
4 is that right?

5 A. Yes, sir. 2007.

6 Q. Okay. By any chance, is that involving
7 allegations that he improperly claimed an alimony deduction
8 on his return?

9 A. I believe that was one of the contentions that the
10 CPA had advised.

11 Q. Anything else that you know about involving his
12 2007 return?

13 A. Not that I recall.

14 Q. And as part of your investigation into this case,
15 have you talked with a man named John Casalena who was
16 involved in an investigation conducted by Carol Kennedy's
17 divorce attorney?

18 A. I haven't spoken to Mr. Casalena directly.
19 Detective Steve Page talked to him, and Mr. Richard Echols
20 has spoken to him, as well.

21 Q. And are Mr. Casalena's allegations that were made
22 during a divorce proceeding part of what is continuing to be
23 investigated?

24 A. Yes.

25 MR. SEARS: That's all I have, your Honor.

1 THE COURT: Redirect.

2 MR. AINLEY: Yes, thank you.

3 REDIRECT EXAMINATION

4 BY MR. AINLEY:

5 Q. Detective, this won't take very long.

6 Mr. Sears asked you earlier today, when he
7 started his cross-examination, if -- about the bike tracks.

8 Do you remember him asking you about
9 that?

10 A. Yes, sir.

11 Q. And that was Exhibit 12, which was previously
12 moved into evidence.

13 Do you remember him asking you about
14 that?

15 A. Yes, sir.

16 Q. And he was asking you about the uniqueness of
17 those particular types of prints.

18 Do you remember him asking you about
19 that, as well?

20 A. Yes, in some fashion.

21 Q. Is there something beyond the tread that is unique
22 to those tire tracks?

23 A. The rear tire was deflated. We had a detective
24 sergeant out at the scene -- Detective Sergeant Winslow. He
25 made a comparison from Mr. Democker's tire on Mr. Democker's

1 bike against the tracks or tread patterns at the scene. He
2 used the terminology "identical" and left no doubt that those
3 were the tires.

4 Q. When mountain bikers -- which tires are we talking
5 about, the front tire or the rear tire on the -- that made
6 those tire tracks? Which one was flat?

7 A. The rear tire, from my understanding.

8 Q. And when you seized Mr. Democker's bicycle from
9 his home, which of the two tires was the one that was flat?

10 A. The rear tire.

11 Q. Defense counsel asked you about the report of rain
12 by residents in that area earlier that day.

13 Do you remember him asking you about
14 that?

15 A. Yes, sir.

16 Q. And he also made mention of a radio station that
17 is in that area that reports the weather.

18 Do you remember him asking you about
19 that, as well?

20 A. A weather station, I believe.

21 Q. A weather station. Okay.

22 Do you have any idea where the rain gauge
23 for that particular weather station is located?

24 A. No, sir, I don't.

25 Q. Well, when it rains in Yavapai County, does it

1 rain on all of Yavapai County simultaneously to the same
2 amount?

3 A. That hasn't been my experience.

4 Q. Earlier today, Mr. Sears asked you if you had any
5 direct evidence that ties Mr. Democker to the location of the
6 homicide.

7 Do you remember him asking you about that?

8 A. Yes, sir.

9 Q. And he also brought in a statement that Detective
10 Brown had made in one of the search warrant affidavits to
11 that effect, as well.

12 Do you remember him bringing that up, as
13 well?

14 A. Yes, sir.

15 Q. Does the fact that there is no direct evidence --
16 or was no direct evidence found at the scene, say anything to
17 you as a trained homicide detective about premeditation?

18 A. Well, it would indicate -- it could be an
19 indicator that the subject had planned the crime, and
20 therefore, it wasn't done in haste -- did not leave physical
21 evidence at the scene.

22 Q. Is it your understanding, sir, that evidence that
23 is admissible in court is of two different types: Direct and
24 indirect, or what is called "circumstantial"?

25 A. Yes, sir.

1 Q. Defense counsel asked you if you had any direct
2 evidence, and your answer was no; is that correct?

3 A. I believe, except for the -- I had mentioned the
4 tread patterns.

5 Q. Do you have indirect evidence that ties
6 Mr. Democker to that residence?

7 A. Yes.

8 Q. Could you list that evidence for us, please.

9 A. Well, Mr. Democker had previously lived there. He
10 knew the area, and he knew the house.

11 He also knew Carol Democker's work
12 schedule, her habit of running during the evenings, and
13 generally when she would go on those runs.

14 He knew Katie Democker was -- I believe,
15 Katie was living at Carol's residence at the time of the
16 homicide. Katie was out of the country. She had left, I
17 believe, the previous Saturday.

18 Mr. Democker also knew that there was a
19 golf club at that residence.

20 Mr. Democker's cell phone was out of
21 commission, I believe, two-and-a-half hours prior to the
22 homicide and two hours after the homicide.

23 Mr. Democker had mentioned that he was on
24 a trail -- a bike trail, that he had been on there for
25 approximately four hours due to having a flat tire. Yet,

1 during that entire time period, he could not state that
2 anybody had seen him. At least that is what he told
3 detectives, to the best of my recollection. And basically,
4 he didn't have an alibi for the time period in question.

5 In addition to that, Mr. Democker was
6 riding his bike, according to Mr. Democker, on a trail that
7 was across Williamson Valley Road on the west side. Carol
8 Democker's neighborhood was on the east side of that portion
9 of Williamson Valley Road.

10 Mr. Democker admitted familiarity with
11 the area, with the trails, including those behind the house,
12 as he used to live there.

13 There was no indication of any other type
14 of crime occurring at that scene, other than a homicide.
15 There was no sexual assault to the victim, and there was no
16 evidence that any type of robbery or anything like that took
17 place.

18 There is indications that Mr. Democker
19 was considering running.

20 The nature of the injuries did lean to
21 the suggestion that this was -- at some point, rage took
22 over. And rage is generally associated or can be associated
23 with somebody familiar with the victim.

24 Again, the tire tracks at the scene seem
25 to show some type of similarity or consistency with

1 Mr. Democker's bike.

2 Q. Did Mr. Democker ever make statements that were
3 later found to be false?

4 A. Mr. Democker made a statement that when he arrived
5 back from the run, Mr. Democker -- the gate code showed that
6 he went out three times. Actually, the gate code shows when
7 he comes in, not when he leaves.

8 The gate -- at least his transmitter --
9 not necessarily Mr. Democker's, but the transmitter used to
10 operate that gate was activated three times between the time
11 he arrived home at, I believe, 10:08 p.m. and the time he
12 went to meet law enforcement out at the scene.

13 MR. SEARS: Your Honor, I object to this line
14 of questioning. I think it's beyond the scope of the cross.

15 The premise of this line was to elicit
16 from this witness examples of indirect evidence to rebut
17 testimony that he gave regarding direct evidence. What he's
18 doing now is going off into entirely new areas that were not
19 mentioned on direct or cross, leaving me without any
20 opportunity to test this new evidence.

21 I think that it's beyond the scope of
22 redirect, now, in that area, and I would object to the
23 continuation of this line of testimony, unless the Court
24 would consider giving me some additional cross on these new
25 matters.

1 THE COURT: Mr. Ainley.

2 MR. AINLEY: The same summation, I believe,
3 was presented to the Grand Jury, Judge, and this evidence is
4 already in evidence in the Grand Jury transcript, which
5 Mr. Sears has had access to for quite some time.

6 When Mr. Sears makes a tactical decision
7 not to go into the indirect evidence, as opposed to just
8 direct evidence, that is a tactical decision that Mr. Sears
9 has made, and he has to live with the consequences. When he
10 opens the door asking about whether there is any direct
11 evidence, the State certainly has the opportunity to present
12 that there was, in fact, indirect evidence.

13 THE COURT: So you are saying it is cumulative
14 because it's already in the Grand Jury transcript.

15 MR. AINLEY: Not necessarily, sir.

16 THE COURT: I am being somewhat facetious.

17 I will overrule the objection, Mr. Sears.
18 If you want to have some additional inquiry, I will consider
19 that.

20 MR. SEARS: Thank you, your Honor.

21 BY MR. AINLEY:

22 Q. One last area, Detective, that Mr. Sears brought
23 up with you. And I will use Mr. Sears' diagram here.

24 This is Exhibit 66, previously moved into
25 evidence. Mr. Sears asked you about this street map earlier,

1 from the Love Lane area here to Bridle Path and talked about
2 this being one mile. You testified at Grand Jury concerning
3 the approximate distance from where Mr. Democker said that he
4 was riding to the Bridle Path house where the homicide took
5 place.

6 As the crow flies this way, from where he
7 parked to where the Bridle Path house was, approximately how
8 far is it, according to this map?

9 A. Seems to me it would be about the same distance as
10 the Bridle Path Street.

11 Q. Well, if I remember correctly, Mr. Sears was the
12 one who said this was approximately one mile.

13 A. Yes, sir.

14 Q. Okay. So is that also approximately one mile?

15 A. Yes, sir.

16 Q. As the crow flies.

17 I believe you said during your Grand Jury
18 testimony that it was approximately a mile and a half; is
19 that correct?

20 A. Yes, sir.

21 MR. AINLEY: Thank you, sir. I don't think I
22 have any other questions for you at this time.

23 THE COURT: Mr. Sears, I think the only area
24 that was gone into that might have been opened differently
25 than what you crossed on was talking about the gate and that

1 sort of thing.

2 Did you want some questions with regard
3 to that?

4 MR. SEARS: Yes. Thank you, your Honor.

5 RECROSS-EXAMINATION

6 BY MR. SEARS:

7 Q. You testified now, today, that -- let me lay a
8 little foundation for the judge to understand this -- that
9 the gate in the community in which Mr. Democker lived was
10 accessed by someone using his gate-opening code three times
11 on the evening of July 2nd, between 11 p.m. and midnight,
12 roughly; is that right?

13 A. Roughly, yes, sir.

14 Q. Now, when Mr. Democker was being interviewed by
15 the police at length on the night of July 2nd, the morning of
16 July 3rd, of course the police didn't have that gate code
17 information; is that right?

18 A. That would be correct, sir.

19 Q. This is -- this is information that was gathered
20 days later in the investigation from the homeowners
21 association; correct?

22 A. Yes, sir.

23 Q. Now, other witnesses, including Mr. Democker, said
24 that there was at least one occasion where Mr. Democker
25 apparently left his residence, went out the gate -- which

1 would not activate any electrical record -- went to his
2 office, which was just two blocks away; correct?

3 A. Yes, that is what he stated.

4 Q. Just take a minute or two to drive from the
5 location in Hassayampa, down Hassayampa Village Lane and
6 enter Thumb Butte Road and turn into UBS office in Plaza
7 West; correct?

8 A. Yes. It is a short distance.

9 Q. And then presumably he came back and went through
10 the gate. So that would account for one of the three opens;
11 is that right?

12 A. Yes, sir.

13 Q. One of the times -- the third time, the two young
14 people, Mr. Jenesak and Sharlot Democker, who were at the
15 house, had presumably left the Alpine Meadow area to head out
16 to Bridle Path. You know that; right?

17 A. Yes, sir.

18 Q. So they wouldn't have been there to know whether
19 Mr. Democker left again for any reason, in fact, for the
20 third of the three trips; correct?

21 A. That would be my understanding.

22 Q. We don't have any indication from anybody about
23 whether he did, and if he did, what the purpose of that third
24 trip was for; is that right?

25 A. No, sir.

1 Q. How far apart in time were the first and second
2 gate-code entries?

3 A. I would have to refer to a report.

4 Q. Can you find it quickly?

5 A. I don't have the -- I can probably -- actually,
6 sir, to expedite the process, I'll refer to the Grand Jury
7 testimony. It's shorter, and I believe I did articulate it
8 to the Grand Jury.

9 Q. Why don't you do that.

10 A. Page 60. Those times would be 11:05, 11:22 and
11 11:51.

12 Q. Now, if I understood what you said in response to
13 the question just now from Mr. Ainley, you believe that
14 Mr. Democker lied to Detective Brown about his activity with
15 respect to the gate that night?

16 A. No. I believe he lied to Jacob Jenesak about a
17 matter. And I can go into detail about that if you would
18 like.

19 Q. Has to do with turning off the computer?

20 A. Yes, sir.

21 Q. Okay. And if I understand the theory that the
22 State's advanced on this is that young Mr. Jenesak, who is
23 the teenage boyfriend of Mr. Democker's youngest daughter,
24 told the police that he thought that Mr. Democker said that
25 night that he'd gotten a phone call from a co-worker that his

1 computer was on at the office, and he left to go turn that
2 off.

3 Is that what we are talking about?

4 A. Yes, sir.

5 Q. And the police interviewed the co-worker who said
6 he didn't make any such call; is that right?

7 A. That's correct.

8 Q. You read, I imagine more than once, the lengthy
9 interview that Mr. Democker gave with Detective Brown the
10 night and early morning of these events; correct?

11 A. Yes, I read the transcript.

12 Q. In that transcript, Mr. Democker talked about
13 going back to the office, but he said nothing to the police
14 about doing so in response to a call from his co-worker or
15 anyone else; is that right?

16 A. I would have to go through the entire transcript.
17 I don't recall that exactly, sir.

18 Q. It's true, isn't it, Detective, that the only
19 place that this story about Mr. Democker going to his office
20 supposedly in response to a call from a co-worker comes to
21 your knowledge is from young Mr. Jenesak; is that right?

22 A. I believe that would be correct.

23 Q. In the lengthy interview that went on for hours
24 with my client, he talked to Detective Brown at length about
25 going to the office on his own initiative to see if his

1 computer was off. That is what he said in the interview,
2 didn't he?

3 A. I believe originally he -- I believe Detective
4 Brown may be able to answer this question better, but I
5 believe he had told Detective Brown that he had went to the
6 office for another reason originally and then had stated
7 later on in the interview that he went to turn off his
8 computer.

9 Q. The point, though, is that Mr. Democker, when
10 asked directly that night by the police about what it was
11 that he was doing at the office, never once said that he had
12 gotten a call from a co-worker or anyone else that prompted
13 him to go. He never said that, did he?

14 A. Not to my recollection.

15 Q. So in order for Mr. Democker to be lying, you
16 would have to believe young Mr. Jenesak and disbelieve
17 Mr. Democker; correct?

18 A. That would be a correct assumption, sir.

19 Q. In fact, when the police went to the UBS office
20 the next day, there were, in Mr. Democker's office, three
21 computer monitors, weren't there?

22 A. Sir, I don't recall the exact amount of computer
23 monitors. Did you say "monitors" or --

24 Q. Monitors. Screens.

25 A. Okay. I don't recall that.

1 Q. Have you looked at the police photographs of
2 Mr. Democker's office taken on the morning of July 3rd, 2008?

3 A. Yes, sir.

4 MR. SEARS: If I could just have a moment,
5 your Honor.

6 Let me show you what I've had marked --
7 if I could approach, your Honor?

8 THE COURT: Go ahead.

9 BY MR. SEARS:

10 Q. Exhibit 62 for identification. This is
11 Mr. Democker's office at UBS in Plaza West in Prescott,
12 Arizona, isn't it?

13 A. Yes, sir, that appears to be.

14 Q. And you can see the one, two, three computer
15 monitors there; correct?

16 A. Yes, sir.

17 Q. This is a picture taken by the police in
18 connection with the search warrant executed on July 3rd;
19 correct?

20 A. It appears that would be the case.

21 Q. Those computer monitors in that photograph are all
22 off, aren't they?

23 A. Yes. I don't see them as being on.

24 MR. SEARS: Now, I would move 62.

25 THE COURT: Any objection?

1 MR. AINLEY: No objection.

2 THE COURT: 62 is admitted.

3 BY MR. SEARS:

4 Q. Let me show you Exhibit 61 for identification.

5 MR. AINLEY: Judge, I am going to object. We
6 are now well beyond the re-opening of this line of
7 questioning concerning the indirect evidence and are now
8 proceeding down an entirely new line.

9 THE COURT: Mr. Sears?

10 MR. SEARS: Your Honor, this has to do with
11 corroborating the fact that Mr. Democker went to his office
12 to turn off his computer, and here is a picture of his
13 computer turned off.

14 THE COURT: Didn't we already have information
15 that the computer was turned off in Exhibit 62?

16 MR. SEARS: The monitors were. This is a
17 slightly different picture which shows that actually what
18 happened was that Mr. Democker had logged off his computer.
19 This is the screen that Windows shows when you log off.
20 Leave the computer on but the monitor off.

21 THE COURT: What's the number?

22 MR. SEARS: 61. I'd move 61.

23 THE COURT: Is this our last part of your --

24 MR. SEARS: Now it is.

25 THE COURT: Any objection to 61?

1 MR. AINLEY: No.

2 THE COURT: 61 is admitted.

3 MR. SEARS: Thank you. That's all, your
4 Honor.

5 THE COURT: Redirect?

6 MR. AINLEY: No, sir.

7 THE COURT: May this detective be excused
8 today to go home and go to bed?

9 MR. AINLEY: I would prefer that he stay, but
10 I understand that he is not able to and needs to go home.

11 THE COURT: You are excused, Officer. Thank
12 you.

13 Until Mr. Ainley advises you, though,
14 this is going to be a continuing hearing, and I am not sure
15 when it is going to end. Don't speak to the other detectives
16 that may be witnesses about the case, who may still be
17 called.

18 MR. AINLEY: Judge, I've instructed them that
19 they are not to talk to each other about their testimony, but
20 they have to continue to investigate this case.

21 THE COURT: And other cases, no doubt. So as
22 long as you have given that advice already, I appreciate
23 that. I will withdraw what I advised.

24 MR. AINLEY: Thank you.

25 THE COURT: Next witness.

1 MR. AINLEY: State calls Detective Steve Page
2 to the stand.

3 STEVE PAGE,
4 called as a witness, having been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. AINLEY:

8 Q. Sir, would you state your name, please.

9 A. Steve Page.

10 Q. How are you employed, sir?

11 A. I'm employed by the Yavapai County sheriff's
12 office.

13 Q. In what capacity, sir?

14 A. As a detective.

15 Q. How long have you been in law enforcement?

16 A. Nine years.

17 Q. What is your current assignment -- did you say?

18 A. As a detective.

19 Q. And how long have you been in detectives?

20 A. A little over five years. Right about five years.

21 Q. I am placing what has been marked as Exhibit 1, a
22 copy of the departmental report in this matter here for your
23 use. It's closed. Please feel free to use it at any time to
24 refresh your recollection, but please indicate verbally that
25 you are looking at the report. Okay?

1 A. All right.

2 Q. Sir, do you have some training or expertise in the
3 area of computer forensics?

4 A. Yes, I do.

5 Q. Tell us what sort of training that you have in
6 that area.

7 A. I have completed several courses -- the basic data
8 recovery and acquisition course developed by the National
9 White Collar Crime Center; the intermediate data recovery and
10 analysis course; and a course in ILook, an acronym for a data
11 recovery software program.

12 Q. What sort of software programs have you been
13 trained to use to recover data from computer systems?

14 A. I have had a little bit of experience with ILook
15 and some experience with EnCase.

16 Q. And when did you become involved in this case?

17 A. I believe sometime in August.

18 Q. And what were you tasked to do?

19 A. To evaluate or to do the investigation into the
20 computer systems that were seized in this case, as well as
21 all other digital media.

22 Q. What was your understanding of where computers had
23 been seized from? What locations had computers been seized
24 from in this matter?

25 A. From Mr. Democker's condominium here in town, from

1 Carol Kennedy's home, from Mr. Democker's office here in town
2 in Prescott. I believe that is all.

3 Q. Where were the computers the very first time you
4 saw them?

5 A. I have not actually seen the computers themselves.
6 They were sent to the DPS crime lab and imaged, and I've
7 worked from the images.

8 Q. What do you mean by "imaged"?

9 A. A mirror image is created of the hard drive from
10 the computer system so that the original data is not used at
11 all. We work from the image -- the mirror image or the copy.

12 Q. Why is that?

13 A. To protect the integrity of the original evidence.

14 Q. What was the first thing that you did when you
15 began your investigation of Mr. Democker's computer systems?

16 A. Using the image that was created by the DPS crime
17 lab -- again, going through it in a general sense, just
18 reviewing documents, doing keyword searches, and seeing what
19 data was on his hard drive.

20 Q. What did you do with the data that you recovered
21 at that point in time?

22 A. Any information that seemed of relevance to the
23 case or I have an interest in, I would flag in the software.
24 It is called creating a bookmark. And using that bookmark, I
25 can evaluate it more in detail or export it out to a report.

1 Q. And did you create a report in this particular
2 case?

3 A. Yes, I did.

4 Q. Let me show you what's been marked as
5 Exhibit 30 -- I'm sorry, 50.

6 Let me show you what has been marked as
7 Exhibit five-zero.

8 Do you recognize those documents? Feel free
9 to look through them, please.

10 A. Yes, I do.

11 Q. Why do you recognize those documents?

12 A. It is an EnCase report that I completed.

13 Q. What is the source of the information in that
14 report?

15 A. It is from Evidence No. 411, which is identified
16 as Steven Democker's laptop computer.

17 Q. Is this the one that was taken from his home?

18 A. Yes.

19 Q. As you generated this report, did you -- you said
20 you ran word searches?

21 A. Yes.

22 Q. What is a "word search"?

23 A. Using a keyword such as the word "kill" or "death"
24 and EnCase will go through and search whatever I tell it to
25 of that hard drive or of that image and look for instances

1 where those words are used, and it will flag them for me.

2 Q. When you used the word search for the word "kill,"
3 did the computer generate any data or lead you to any data
4 that was in the computer?

5 A. Yes.

6 Q. What did it lead you to?

7 A. It led me to remnants from two different Web pages
8 that appear to be Google keyword searches. The remnants of
9 those keyword searches or the remnants of the Web pages, the
10 search term typed in on one of them was "How to kill
11 someone," and a search term that was typed in on another Web
12 page was "Tips from a hit man on how to kill someone."

13 Q. Let me show you what's been marked as Exhibit 52.

14 Do you recognize that document, sir?

15 A. Yes, I do.

16 Q. Why do you recognize it?

17 A. It is one of the remnants of a Web page that I
18 just mentioned, using the keyword search "How to kill
19 someone."

20 Q. And were you able to associate any date with that
21 particular download or that search?

22 A. Not with this particular information, no.

23 Q. Okay. What was the full entry, the actual -- the
24 terms that were used that were entered to do that search by
25 the party who was running the search originally?

1 A. The phrase "How to kill someone."

2 Q. Would you say that you found this second entry
3 using the word "kill"?

4 A. Yes.

5 Q. Let me show you what has been marked as
6 Exhibit 51.

7 Do you recognize Exhibit 51?

8 A. Yes, I do.

9 Q. What is 51?

10 A. It is the remnants of a Web page search using the
11 search term "Tips from a hit man on how to kill someone."

12 Q. Were you able to associate a date with that
13 particular search?

14 A. Not from the data inherent in this search or in
15 this document.

16 Q. Okay. Does 51 accurately show the information
17 that you were able to retrieve from Mr. Democker's computer
18 when you ran the EnCase file?

19 A. Yes.

20 MR. AINLEY: State moves for the admission of
21 51.

22 MR. SEARS: I have some questions on voir
23 dire, your Honor.

24 THE COURT: Proceed.

25 MR. SEARS: Thank you.

VOIR DIRE EXAMINATION

BY MR. SEARS:

Q. Detective Page, you wrote a two-page supplemental police report in connection with this investigation that you have done; is that right?

A. Yes.

Q. Do you have a copy of that with you?

A. Here.

Q. Would you take a look at it.

A. I have it in front of me.

Q. The reports that you generated, the exhibits that you have here in front of you apparently were done as a result of some work you did last Wednesday, December 17; correct?

A. Yes.

Q. If I understand what you did is you went down to DPS crime lab and met with a man named Roger Hoover who works there; is that right?

A. Yes.

Q. Mr. Hoover had you use one of their computers and a copy of the EnCase, E-n-C-a-s-e, software to work with the clone of the hard drive from Mr. Democker's laptop -- Evidence 411; is that right?

A. Yes.

Q. Did you work alone, or did you work with

1 Mr. Hoover?

2 A. I worked at Mr. Hoover's work station.

3 Q. Had Mr. Hoover, to your knowledge, done a full
4 EnCase computer forensics analysis of that hard drive prior
5 to December 17?

6 A. I don't know.

7 Q. In fact, Mr. Hoover -- somebody from the DPS
8 office back as early as December 2nd -- about three weeks
9 ago -- somehow communicated to the County Attorney's office
10 that someone had found these kinds of remnants on the hard
11 drive; isn't that right?

12 A. I am not clear on the date. I don't know for
13 certain the date, but I believe so, yes.

14 Q. Was it you?

15 A. I did communicate to my department that I had
16 found remnants.

17 Q. When?

18 A. I don't know the date.

19 Q. When did you first work on this hard drive
20 evidence, Item 411, this clone -- actually, physically work
21 with it?

22 A. I have done some work with it beginning, I
23 believe, November 13 was when I started.

24 Q. This hard drive was seized on July 3rd; is that
25 right?

1 A. To the best of my knowledge, yes.

2 Q. Now, you said that you can't associate dates for
3 this information.

4 Have you taken the information on
5 Exhibit 51 for identification and actually tried to look at
6 the Web content reflected by something like "Video game
7 defense, grizzly beheading blamed on hit man."

8 Have you looked at that Web site?

9 A. I don't recall. No, I don't think so.

10 Q. Can you say here today under oath that the EnCase
11 work that was done by you on this computer establishes that
12 each of the items in Exhibit 51 were actual Web sites that
13 were viewed, opened, and looked at by whomever was operating
14 the laptop, or are they simply remnants of a larger Google
15 search?

16 A. The document you hold in your hands is a remnant
17 of a Google search.

18 Q. So put another way, there is no indication from
19 your work or from Exhibit 51 for identification that
20 Mr. Democker or anyone else using his laptop actually viewed
21 the contents of these listed Web sites. Is that fair to say?

22 A. This time.

23 Q. Furthermore, the report that you generated -- this
24 two-page report which is at Bates 2394 and 2395, delivered to
25 me last Thursday by the State, indicates that there was a

1 large "index.dat," a data file, created in 2006 on this
2 laptop; isn't that right?

3 A. Yes.

4 MR. AINLEY: I am going to object. This is
5 beyond foundation -- voir dire on foundation for the
6 document.

7 THE COURT: That question seems to be.

8 Sustained.

9 BY MR. SEARS:

10 Q. When you said you couldn't associate a date with
11 this, a data file, index.dat file, on a computer like this
12 that is being searched using EnCase, means that any of these
13 searches could have been conducted anytime between --
14 according to your file -- May 19, 2006 or July 8, 2008, the
15 date that data was last accessed and an entry to the DAT file
16 was made; correct? Anywhere in that range.

17 A. I would have to explain a little bit more about
18 the DAT file to explain those dates.

19 Q. Well, let me see if I can explain it to you, and
20 you can tell me where I'm wrong. Here's what I understand.

21 I understand that a DAT file, in the
22 context of your report, shows every activity inside that
23 computer when it is operating. Then it saves an entry to a
24 DAT file. And unless that DAT file is deleted or altered,
25 the DAT file is cumulative from, in this case, May 19, 2006,

1 until July 8 of 2008; is that correct?

2 A. Not to the best of my knowledge, no.

3 Q. What do you think the DAT file is, then?

4 A. To my understanding and to clarify, the file is an
5 index.dat file, and there are several different files with
6 that name. There's different purposes within the computer
7 system other than a software operating system.

8 This file is associated with the Internet
9 Explorer cache and relates to activity that is completed or
10 done by the user through Internet Explorer. So it does not
11 document or track everything that is done in the computer.
12 It documents and tracks activity with Internet Explorer.

13 Q. Given that qualification with respect to Internet
14 Explorer -- which is the browser on that machine; correct?

15 A. Yes.

16 Q. You have a range of dates for activity from May of
17 '06 to July 8th, 2008; is that right?

18 A. I believe, without referencing those dates, that
19 is correct.

20 Q. The computer was seized by the police on July 3.
21 Presumably, the police wouldn't turn that computer on or work
22 with it after they seized it; correct?

23 A. That would be correct.

24 Q. But you have in your report an indication that
25 this index file, this log that was created, the DAT file

1 shows that someone last accessed that hard drive on July 8,
2 five days after it was seized; correct?

3 A. Correct.

4 Q. Was it you?

5 A. Actually, I can't explain why the date is shown
6 under the file access date of July 8, 2008. I do not know
7 why the system changed that date.

8 Q. Let's talk about protocol.

9 Your understanding of the protocol at the
10 Yavapai County sheriff's office is they seize a computer. No
11 police officer should turn it on, turn it off, do anything
12 with it. They should send it as they seized it to the DPS
13 crime lab in Phoenix; correct?

14 A. Correct.

15 Q. And then when it arrives at the DPS crime lab in
16 Phoenix, the protocol there is for technicians to put a write
17 block on that computer before they work with it, to prevent
18 just this circumstance -- something accidentally written to
19 an evidence item; correct?

20 A. Yes.

21 Q. And they take the appropriate software and
22 hardware and clone the hard drive, so that you have something
23 to work with; correct?

24 A. Correct.

25 Q. But in this case with Mr. Democker's computer,

1 somehow that protocol doesn't seem to be followed. There's
2 an entry five days after the computer comes into police
3 custody that shows something happened with that computer that
4 caused it to be changed on July 8 at 3:47 and 18 seconds in
5 the afternoon; correct?

6 A. There is something that caused that date to be --

7 Q. And you can't tell us what it was, can you?

8 A. No, I cannot.

9 Q. Now, did you look at any of the Web content for
10 any of these Web sites that are listed in the unallocated
11 clusters in this temporary Internet file?

12 A. I did.

13 Q. Do you remember which ones you looked at?

14 A. Not off the top of my head. I believe the other
15 one is on the document that you have -- or that Mr. Ainley
16 has.

17 MR. AINLEY: Exhibit 52.

18 THE WITNESS: I believe I looked up the Web
19 site "How to kill someone and make it look like an accident."

20 BY MR. SEARS:

21 Q. Okay. That's a joke page, isn't it?

22 A. It appears to be.

23 Q. Let me show you a copy.

24 Here I had it marked. Here is a copy for
25 Mr. Ainley. I need to find the exhibit.

1 Let me show you Exhibit 69 for
2 identification. This is "How to kill somebody and make it
3 look like an accident," isn't it?

4 A. It appears similar to the Web site that I looked
5 at.

6 Q. Okay. The first suggestion is, "Buy them some
7 cigarettes."

8 MR. AINLEY: Judge, I'm going --

9 THE COURT: Sustained.

10 MR. AINLEY: -- to object. This is well
11 beyond the scope of voir dire on this.

12 THE COURT: Sustained.

13 There is an offer of evidence, Mr. Sears.
14 This seems like it's going into cross-examination.

15 MR. SEARS: Thank you. Your Honor, I will
16 come back and do cross-examination, but I do object to
17 Exhibit 51.

18 There is no foundation that makes any
19 part of the data on Exhibit 51 relevant to this case, because
20 this witness has now said, A: It's a tampering of some kind
21 with the computer. But more importantly, there is no
22 indication from his investigation that anyone -- Mr. Democker
23 or anyone else -- ever actually looked at these Web sites.

24 What 51 is is a remnant from the search.
25 If you type in the word "hit man," it might produce 69,000

1 responses, of which these are five. There is no relevance to
2 any issue before the Court here.

3 THE COURT: Overruled.

4 That was an offer for Exhibit 51. 51 is
5 admitted.

6 MR. AINLEY: The State is going to offer 52.

7 MR. SEARS: Same objection.

8 THE COURT: 52 is admitted.

9 DIRECT EXAMINATION RESUMED

10 BY MR. AINLEY:

11 Q. Detective, you just heard Mr. Sears' objection,
12 didn't you, that there is no evidence that somebody went in
13 and looked at these different listings that came up during
14 this search.

15 Did you hear his objection?

16 A. Yes.

17 Q. But to get to this page, somebody had to type in
18 the words "How to kill someone"?

19 A. Correct.

20 Q. Would that evidence some interest in how to kill
21 someone?

22 MR. SEARS: Objection. Foundation.
23 Speculation.

24 THE COURT: Sustained.

25 MR. SEARS: Move to strike any answer.

1 THE COURT: I didn't hear one, but I will
2 strike one if you heard one.

3 MR. SEARS: Thank you. I heard something.

4 BY MR. AINLEY:

5 Q. Did you recover any other data from the computer,
6 sir?

7 A. Yes.

8 Q. What else did you find?

9 A. Several files relating to carbon monoxide and some
10 other chemicals, a document for a -- being issued for
11 Mr. Democker being issued a federal employer identification
12 number, indications of other Google searches for other terms.

13 Q. Let me show you what's been marked as Exhibit 53.

14 Do you recognize Exhibit 53?

15 A. Yes.

16 Q. What is 53?

17 A. It is a Google search page for the phrase "Even
18 the smallest things can attack."

19 Q. And did that Google search page lead you to any
20 other information contained on that computer?

21 A. Not that I recall offhand, at this point.

22 Q. Why did you flag that particular page?

23 A. Because the search phrase tied in with the concept
24 of someone being attacked or causing some injury.

25 MR. AINLEY: State moves for the admission

1 of --

2 Q. Oh, were you able to tie a date to this one?

3 A. Not that I recall offhand, unless it's in the
4 index.

5 MR. AINLEY: All right. State moves for the
6 admission of 53.

7 MR. SEARS: No foundation. Irrelevant.

8 THE COURT: Overruled.

9 53 is admitted.

10 BY MR. AINLEY:

11 Q. Now, you said that you found information
12 concerning Mr. Democker looking at something that has to do
13 with gases?

14 A. Yes.

15 Q. And that he had obtained an EIN number -- an
16 employee identification number.

17 A. Employer identification number.

18 Q. Employer identification number.

19 What else did you find in reference to
20 that number?

21 A. There is a document completed on his computer that
22 is a customer information form for a company called Matheson
23 Tri-Gas, and that EIN number is entered into that document
24 representing a business interest that Mr. Democker is
25 apparently creating or created.

1 Q. What was the name of that company that he is
2 creating or created?

3 A. I believe the name of it is "D.B.D. Research and
4 Consultant."

5 Q. And this form that was filled out using the EIN
6 number and Mr. Democker's new business, did it say what the
7 purpose of this business was?

8 A. No, it did not.

9 Q. Did it say what the purpose of this form was?

10 A. The form appears to be a certification form
11 that -- for someone to acquire regulated chemicals from
12 Matheson Tri-Gas.

13 Q. Did the information that Mr. Democker was looking
14 at, acquiring some sort of gas, lead you to anything else
15 inside the computer system?

16 A. Yes, it did. One of the gases -- as a matter of
17 fact, multiple documents in this area referenced carbon
18 monoxide. And a further search of the system turned up a
19 fragment or an item, I guess I would refer to it, in the
20 index.dat file that indicated a Google search for the phrase
21 "Carbon monoxide use in suicide" or something very similar to
22 that phrase.

23 Q. And did it say just in suicide or in faking a
24 suicide?

25 A. I believe the former -- just in suicide.

1 Q. Were you able to pull up any dates in reference to
2 that DAT entry?

3 A. Yes. What was the date on that DAT entry?

4 I would have to refer to Item 50 here.

5 The search term "Use of carbon monoxide
6 in suicide," appears that the last written date was
7 July 2nd, 2008. It is also from that same index.dat file.

8 Q. I'm sorry, July?

9 A. July 2nd, 2008 was the last time that file was
10 written that contained that information.

11 Q. You made mention of a form to Matheson Tri-Gas.

12 Was there a date on that particular
13 document when it was filled out?

14 A. Looking at the index, it indicates that the file
15 was created on March 15, 2008, last written on May 7th of
16 2008, and last accessed on June 1st, 2008.

17 Q. All right. Anything else that you found inside
18 the computer system that is part of that report -- references
19 this?

20 A. Yes. There were several indications of Google
21 searches that had been completed that were germane to the
22 topic of homicide or suicide.

23 Q. List them for us, please.

24 A. Referring back to No. 50.

25 MR. SEARS: I don't think 50 has been moved.

1 I object to the witness reading from something not in
2 evidence.

3 MR. AINLEY: State moves for the admission of
4 50.

5 THE COURT: 50 is admitted.

6 THE WITNESS: There was a Google search
7 completed using the phrase "How to kill and make it look like
8 suicide."

9 BY MR. AINLEY:

10 Q. Is there a date associated with that Google
11 search?

12 A. It would be the same dates as the other items.
13 The dates refer to the index.dat file, with the file creation
14 dating May 19, 2006, last written date July 2nd, 2008, and
15 the last access date of July 8, 2008.

16 Q. What other Google searches did you find?

17 A. "Use of carbon monoxide in suicide", and the term
18 "Payment of insurance benefits in the case of homicide."

19 Q. What date was the Google search "Payment of
20 insurance benefits after a homicide" done?

21 A. It would be the same dates as the index.dat file:
22 the file created date of May 19, 2006, last written date of
23 July 2nd, 2008, and the last access date of July 8, 2008.

24 And the remaining search is "How to stage
25 a suicide."

1 Q. How to stage a suicide?

2 A. Yes.

3 Q. And the date associated with that Google search?

4 A. The same dates as the index.dat file previously
5 stated.

6 Q. Anything else that you found in that report that
7 you generated?

8 A. I would need to take a quick look at the report to
9 refresh my memory.

10 There are a couple of things that were of
11 interest.

12 Q. List them for us, please.

13 A. The first item would be a cookie that was found on
14 the computer.

15 Q. What is a "cookie"?

16 A. A cookie is a file that is placed on a user's
17 computer from a Web site that is used for tracking
18 information. It contains data about the user's activities on
19 that Web site, so that the next time they go to that Web
20 site, that Web site can be more -- faster to them, can work
21 more to their perceived interest.

22 Q. What data was the cookie placed on?

23 A. I'm sorry, would you ask again?

24 Q. What data was this cookie placed on -- or what
25 file?

1 A. It is a file in and of itself. The file name is
2 Steven underscore Democker, with the ampersand sign,
3 209.85.173{2}.txt. It is a text file that was placed on the
4 computer. The text file -- the dates of that are all the
5 same.

6 The file created date was June 7, 2008,
7 at 4:28 p.m. The last written date was June 7, 2008, at
8 4:28 p.m. And the last access date was June 7, 2008, at
9 4:28 p.m.

10 And the cookie related to a search term
11 of "Tips from a hit man on how to kill someone."

12 Q. From that file name can you tell us who downloaded
13 that information?

14 A. It was tied in with the only user account on the
15 system, which was for Steven Democker.

16 Q. Any other information that you found on the
17 computer that was of interest?

18 A. Yes. The customer information form for Matheson
19 Tri-Gas has a series of questions on it that relate to a
20 safety plan or safety-related information. And among the
21 documents that I found on the computer system is a Word
22 document entitled "Safety Plan.doc" that appears it was in
23 the same folder as the rest of the documents for these gases
24 and other chemicals.

25 And there were several files, including a

1 speck sheet for carbon monoxide and two files of a material
2 safety data sheet for carbon monoxide, as well as some safety
3 sheets and a material safety data sheet for another chemical,
4 as well as a -- several files regarding Praxair, which is a
5 company that also supplies gases -- compressed gases -- and a
6 Word document entitled "Phoenix.doc," which listed four
7 different addresses for Praxair in the Phoenix area.

8 Q. Anything else that you found inside the computer
9 that you -- as part of your report that you generated?

10 A. Nothing I can think of offhand.

11 Q. Okay. Going back to that last one, the safety
12 documents for Matheson Tri-Gas. Is there any date associated
13 with those documents?

14 A. Referring back to No. 50. The dates for the
15 document safety plan.doc file data date was April 19, 2008.
16 The last written date was April 19, 2008. And the last
17 accessed date was June 1st, 2008.

18 Q. All right. Once you created this report and
19 downloaded the Google searches and the documents related,
20 what did you do next?

21 A. The -- to create the report, I just tell EnCase to
22 export it out to a file folder, and it is burned onto CDs for
23 reference or for archiving.

24 Q. And copies of those were provided to the State and
25 to the defense?

1 A. That's correct.

2 Q. Is your investigation of Mr. Democker's computer
3 on-going?

4 A. Yes, it is.

5 Q. Why?

6 A. It is a very -- there is a lot of data on the hard
7 drive, and it's going to be very time-consuming to go through
8 and investigate all of that data to find out whether it is
9 relevant to the case or not.

10 Q. Did you find encrypted files on Mr. Democker's
11 computer?

12 A. Yes.

13 Q. Have you been able to break the encryption yet?

14 A. No.

15 MR. AINLEY: Thank you, sir. I don't think I
16 have any other questions for you at this time.

17 THE COURT: Mr. Sears.

18 MR. SEARS: Thank you.

19 CROSS-EXAMINATION

20 BY MR. SEARS:

21 Q. Detective, are you saying that you created a full
22 EnCase report in connection with the work you did on
23 December 17th?

24 A. I created this report based on the work that I
25 did.

1 Q. Where is the full EnCase report that is generated
2 by that program for all other aspects of this computer?

3 A. I have not created a complete report or a full
4 report, because the investigation is ongoing.

5 Q. Who directed you to use EnCase to search for these
6 particular terms?

7 A. It's the software that the lab provided me to use.

8 Q. I thought you said on direct examination that you
9 used EnCase to look for particular words like "kill."

10 Did I misunderstand your testimony?

11 A. I've used EnCase to do all of the forensic work
12 for this information.

13 Q. Did you use EnCase in this investigation to look
14 on the hard drive, clone this computer -- Evidence Item
15 411 -- for the word "kill"?

16 A. Yes.

17 Q. Whose idea was it to look for that word?

18 A. It may have been provided to me by Detective
19 McDormett or others.

20 Q. You don't remember?

21 A. I don't recall off the top of my head, no.

22 Q. Now, looking at Exhibit 50, you created what
23 appears to be a word-processing file, which is what I have
24 been given here. This is not an EnCase report, this is a
25 word-processing file, is it not?

1 A. I can't really see what you're holding in your
2 hand. If it's the same one I am looking at.

3 MR. SEARS: Can I approach?

4 THE COURT: Yes.

5 BY MR. SEARS:

6 Q. This?

7 A. That looks like a text version of the EnCase
8 report that was also produced with the EnCase.

9 Q. Where is the EnCase report that supplements this,
10 that includes all of the investigation, not just the text
11 report? Where is that?

12 A. The EnCase report is on the same CD that was
13 provided. It has a ".htm" or a ".html" extension on it.

14 Q. Do you need a copy of EnCase to read that?

15 A. No.

16 Q. Looking at this exhibit or this report, you have
17 organized what you call the "compressed gases" files, and
18 you've assigned Items No. 1 through 18, is that right, to
19 those files?

20 A. Looking at the report?

21 Q. Yes.

22 A. Yes.

23 Q. All 18 of those files were found in a folder on
24 this cloned hard drive under "My Documents" -- which is
25 something that the Windows system would do -- under a folder

1 called "Book Research"; correct?

2 A. That's correct.

3 Q. Now, what else was in the Book Research file, if
4 anything, in addition to these 18 files?

5 A. That I don't know.

6 Q. Now, did you look?

7 A. Not yet.

8 Q. Okay. You just pulled out these 18 files because
9 they interested you; is that right?

10 A. Those files were pulled out of bookmarks in
11 context of a much larger search. I don't recall the search
12 conducted, but I flagged them.

13 Q. Is there a word-processing document that is a plot
14 outline on the hard drive of this computer?

15 A. I don't know.

16 Q. Are there any other related folders or files
17 dealing with similar topics on the hard drive to Book
18 Research?

19 A. I don't recall.

20 Q. Were these temporary Internet files ever in a
21 folder called "Book Research" on the hard drive?

22 A. Can you clarify which files you are referring to?

23 Q. Using your numbering system, those would be the
24 recovered Web pages -- 19, 20 -- through 26. 19 through 26.

25 A. If I may clarify one item where you said my

1 numbering system. It is not my numbering system. It is
2 created by EnCase, for whatever difference that makes.

3 Q. Okay. The numbering system on the EnCase report
4 that you generated.

5 A. 19 through 26, you said?

6 Q. Yeah.

7 A. Would you repeat your question for me, again,
8 please.

9 Q. Were any of those temporary Internet files ever
10 stored in the Book Research folder -- saved to the Book
11 Research folder?

12 A. That I can't answer with a simple yes or no.

13 Q. Is it possible they were?

14 A. The files numbered 21 through 26 clearly state in
15 the report where they were found -- in the index files and
16 cookies and et cetera.

17 The recovered Web pages, Items No. 19 and
18 No. 20, were recovered from unallocated clusters. That is
19 space that is apparently unused. Had been prior to used. So
20 I can't say whether that may have been stored or not in any
21 particular file folder.

22 Q. Could they have been in that file folder and
23 moved?

24 A. That I don't know.

25 Q. So it is possible?

1 A. Conceivably.

2 Q. So if someone using that computer was doing book
3 research as opposed to research on how to kill an actual
4 human being, all of this data could be associated with that
5 research, as far as you know; correct?

6 A. That's possible.

7 Q. Well, do you know something about the facts of
8 this case?

9 A. In a limited sense, I suppose.

10 Q. Do you have any reason to think that poisonous
11 gases or toxic gases had anything to do with this case?

12 A. Based on the information I have discovered so far,
13 I believe it is possible, yes.

14 Q. Do you understand that the evidence before the
15 Court here is that the victim in this case died as a result
16 of massive blunt force trauma to her head. Do you understand
17 that that is the evidence?

18 A. Yes.

19 Q. Do you have any other evidence that indicates that
20 the victim in this case actually died or a contributing cause
21 to her death was poisonous gas?

22 A. After the fact, no.

23 Q. Now, do you understand that the allegation in this
24 case is that the victim was murdered in her home by someone
25 using an object that caused this blunt force trauma and who

1 the State alleges then tried to stage it to make it look like
2 an accident. Do you know that much about the case?

3 A. Yes.

4 Q. A person would not likely try to make this
5 injury -- a person with multiple blunt force trauma to the
6 head -- look like a suicide. That is not how a person
7 commits suicide, in your experience, is it?

8 A. Can you clarify your question.

9 Q. A person could not -- in your experience as a
10 police officer and a detective -- commit suicide by crushing
11 their own skull.

12 A. Not typically, no.

13 Q. There is nothing about this case that has any
14 indication that this was made to look like suicide, does it?

15 A. No.

16 Q. Now, the pages that you looked at that had to do
17 with grizzly beheadings -- the victim was not beheaded in
18 this case, was she?

19 A. Those pages that you are referring to, the
20 recovered Web pages?

21 Q. Yeah.

22 A. Okay. The item of interest was not what was on
23 the pages. What was of interest there was the search terms
24 that had to be typed in.

25 Q. If you answer my question, which was: Was there

1 any beheading in this case?

2 A. I didn't see the crime scene.

3 Q. Do you have any reason to think there was?

4 A. Based on the limited information I have, no.

5 Q. Now, conversely, if you take all of this data as a
6 whole -- a hit man and staging accidents and staging
7 suicides -- that could be part of somebody's research for a
8 murder novel. Fair to say?

9 A. Fair to say.

10 Q. But you don't know?

11 A. Correct.

12 Q. Other than Internet Explorer files, have you
13 looked at any other part of the computer forensically, yet?

14 A. Yes.

15 Q. What are you looking at or have you looked at?

16 A. I looked at a number of different files in the
17 system.

18 Q. How about e-mails?

19 A. I have seen some e-mails, yes.

20 Q. Did you find the e-mail exchange in that computer
21 dealing with a character called "The Hero"?

22 A. Not that I recall.

23 Q. Did you read the e-mails?

24 A. Not all of them.

25 Q. Did you understand the context of the e-mails?

1 A. I have looked at a limited number of the
2 significant volume of e-mails that are on the system.

3 Q. If there were e-mails in there between
4 Mr. Democker and other people talking about a potential
5 novel, a plot outline, twists and turns in a novel, would you
6 know if it was there if you saw it?

7 A. I would think so. If I had seen it, I think I
8 would remember it.

9 Q. What if the people that were communicating by
10 e-mail about that were so far down in the project that they
11 didn't, every time they communicated by e-mail, say "Here's
12 another tip for your novel"? They just started talking about
13 some scenario.

14 MR. AINLEY: Objection. Calls for speculation
15 on the part of the witness.

16 MR. SEARS: I will withdraw the question.

17 THE COURT: Sustained.

18 BY MR. SEARS:

19 Q. What are you looking for now?

20 A. Whatever else that computer can tell me that might
21 relate to this crime.

22 Q. Did you find any similar data -- by "similar,"
23 meaning fragments of Web searches or Google searches or
24 documents that had a similar subject matter -- on any of
25 other computers that you looked at?

1 A. So far, this is the only computer I have actively
2 looked through forensically.

3 Q. I still have problems here with a couple of these
4 dates. We talked a bit ago about the -- what I think you say
5 is the inexplicable writing to this computer on July 8, after
6 it was in police custody, if you remember those questions; is
7 that right?

8 A. Yes.

9 Q. Now, using the EnCase Items No. 22, 24, 25, and
10 26, also all have an entry saying that those items were last
11 written on July 2nd at exactly the same time. Did you notice
12 that?

13 A. Those were which numbers again?

14 Q. 22, 24, 25, and 26.

15 A. Yes, I had observed that before.

16 Q. So if that time stamp is to be believed, then all
17 of those items -- the four items were last written
18 simultaneously, exactly the same moment as reflected by the
19 time stamp. Is that what that says?

20 A. No.

21 Q. What does it say?

22 A. That says that the index.dat file was last written
23 or accessed at those times.

24 Q. Did this computer use a 12-hour or 24-hour
25 time-stamp clock?

1 A. I am not certain what kind of clock it uses
2 internally to stamp files. Computers may use different
3 formats in different areas of the operating system for
4 different purposes.

5 Q. Can you express an opinion about what format the
6 clock was for the last written data entries on 22, 24, 25,
7 and 26 at 11:56:28? Is that a.m. or p.m.?

8 A. That I don't know.

9 Q. Do you know what Mr. Democker was doing at
10 11:56 p.m. on July 2?

11 A. No, I don't.

12 Q. Do you know what he was doing at 11:56 a.m. that
13 day?

14 A. No, I don't.

15 Q. Do you know if he was even home at 11:56 a.m. or
16 was he at work?

17 A. At this point in time, I don't know.

18 Q. Do you know if he was talking to his daughter
19 Sharlot on the phone at 11:56 p.m. on July 2?

20 A. I don't know that.

21 Q. Was the computer off or on when it was seized?

22 A. I don't know that either.

23 Q. Do you have any explanation for this July 8 last
24 access date on these items on your report here, Exhibit 50?

25 A. I do.

1 Q. What do you think happened?

2 A. I don't know if this is exactly what happened, but
3 it is a possibility. If the computer -- the battery were
4 left in it, and it had virus software, it might trigger a
5 system to do a virus search at a given time. It could start
6 that search regardless of where it's at.

7 Q. Do you know if that happened?

8 A. No, I don't.

9 MR. SEARS: No further questions.

10 THE COURT: How much do you have left,
11 Mr. Ainley?

12 MR. AINLEY: Probably just a couple of
13 minutes, Judge.

14 THE COURT: Proceed.

15 REDIRECT EXAMINATION

16 BY MR. AINLEY:

17 Q. Mr. Sears just asked you whether you knew where
18 Mr. Democker was at 11:26 a.m./p.m. on July 2nd, 2008. Do
19 you remember him asking you about that?

20 A. Yes.

21 Q. Is July 2nd, 2008 at 11:26 the last time that
22 those documents were actually written or when those documents
23 were actually written?

24 A. I need to refer back. I believe that the last
25 written time was 11:56.

1 And, I'm sorry, would you ask the
2 question again.

3 Q. Well, 11:56 on July 2nd, 2008, was that when those
4 files were actually created?

5 A. I'm sorry. Say that one more time for me.

6 Q. Let me change it.

7 11:56, July 2nd, 2008. What would have
8 to happen for that time stamp to be put on those files?

9 A. That would relate the last written time on that
10 file, which would relate to the time that that file was --
11 something was done to that file and it was written to the
12 hard drive, as best I understand that system.

13 Q. Can that happen with or without an individual
14 being present?

15 A. Based on my limited understanding of how these
16 files function in relation to Internet Explorer, I don't
17 believe so.

18 Q. You don't believe so. You believe a person has to
19 be present or a person does not have to be present?

20 A. I believe a person would have to be present.

21 Q. Would it happen if the computer was simply turned
22 off?

23 A. I don't believe so, no.

24 Q. So what would have to happen for these files to be
25 written to the hard drive?

1 A. This particular index.dat file relates to "cache,"
2 which is a term used for a Web site. If a Web site is
3 brought up on the screen, the computer caches that Web site.
4 In other words, makes a copy of the coding of that on the
5 hard drive. And the index.dat file references where that
6 image is or that cache is.

7 So Internet Explorer would have to be
8 open, and there would have to be some kind of Web page on it.

9 Q. Okay. Mr. Sears asked you about poison gas a
10 little while ago.

11 Do you remember him asking you about
12 that?

13 A. Yes.

14 Q. And the fact that in this particular case, based
15 on your limited understanding of the crime scene, there was
16 no poison gas involved; correct?

17 A. Correct.

18 Q. Why, then, did you look at "poison gas" in going
19 through the file?

20 A. Because of the totality of the files involved that
21 research had been done on, especially for carbon monoxide,
22 and material safety data sheet showing the hazards involved
23 of that chemical, and a Web search -- Google Web search on
24 the use of carbon monoxide in suicide, indicates to me that
25 someone may be looking on how to -- coupled with the phrase

1 "How to stage a suicide" -- could indicate a premeditation to
2 commit murder using that chemical.

3 Q. Looking at the totality of what you found in that
4 report that you generated, would it be fair to say that
5 somebody using that computer wanted somebody else dead?

6 MR. SEARS: Objection. Speculation.

7 THE COURT: Sustained. Argumentative.

8 MR. AINLEY: Okay.

9 Q. What was the common thread that you found in the
10 Web searches that you found and put into that report, sir?

11 MR. SEARS: Foundation. Speculation. Speaks
12 for itself.

13 THE COURT: It does speak for itself.
14 Sustained.

15 MR. AINLEY: Thank you, sir. I don't think I
16 have any other questions for you at this time.

17 THE COURT: I have a question on follow-up,
18 and then I will let the lawyers finish up.

19 If somebody has an Internet Explorer and
20 leaves it there, just waiting to come back or doing something
21 else, and they come back and turn off Internet Explorer, is
22 that going to code it into the last access time frame?
23 Somebody comes in and turns off Internet Explorer and closes
24 up the application?

25 THE WITNESS: That I don't know.

1 THE COURT: Follow-up to my question?

2 MR. AINLEY: No, sir.

3 MR. SEARS: Just one, your Honor.

4 Detective, if I understand what you are
5 saying, you are saying here today that you believe, based on
6 what I think you said was limited knowledge of these files,
7 that you thought that the last written activity could not be
8 caused by simply logging off or powering down the computer,
9 that somebody actually had to open the Web page and then
10 write to the hard drive to make the time-stamp entry. Is
11 that what your testimony is?

12 THE WITNESS: It's my understanding that the
13 index.dat file -- this particular index.dat file is utilized
14 whenever Internet Explorer is up and running or opened, and
15 that would contribute to whatever date and time stamps the
16 software makes to that index.dat file.

17 MR. SEARS: My question was a little more
18 specific. It was: If you had Internet Explorer open and you
19 simply logged off and powered down the computer, would that
20 cause an entry into this index.dat file showing the last
21 written data?

22 THE WITNESS: As I previously stated, I don't
23 know.

24 MR. SEARS: Thank you.

25 THE COURT: Anything else, Mr. Ainley?

1 MR. AINLEY: No, sir.

2 THE COURT: Do you wish to excuse
3 Detective Page?

4 MR. AINLEY: Yes, your Honor.

5 THE COURT: Any objection?

6 MR. SEARS: No.

7 THE COURT: You're excused. We haven't
8 concluded the hearing, so be careful about talking to others
9 about your testimony, at least until you are advised by
10 Mr. Ainley that the hearing has concluded.

11 We are going to close the hearing for
12 this afternoon, I have another matter to go on to.

13 Eleven o'clock is what I proposed on
14 resuming tomorrow morning. Any issue with regard to that?

15 MR. AINLEY: No, sir.

16 MR. SEARS: No, sir.

17 THE COURT: Recessing until eleven o'clock
18 tomorrow morning.

19 And we stand in recess.

20 (Whereupon, these proceedings were concluded.)

21 ***oOo***

22

23

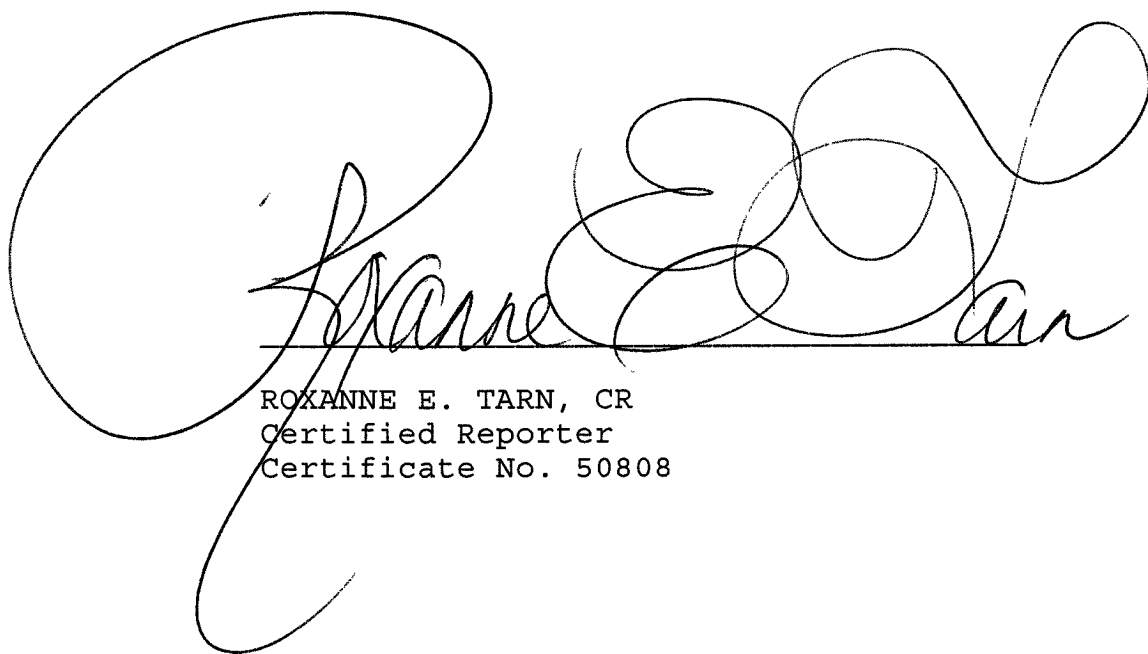
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 175 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 19th day of August,
2009.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808